(18,487.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 299.

MELVIN A. HOYT, PLAINTIFF IN ERROR,

vs.

THE STATE OF WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

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1 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Wisconsin before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Wisconsin, defendant in error against Melvin A. Hoyt plaintiff in error wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause
2 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Melvin A. Hoyt plaintiff in error as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States the 11th day of March, in the year of our Lord one thousand nine hundred and two.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin, Madison.]

F. W. OAKLEY,
Clerk of the Circuit Court of the United States
for the Western District of Wisconsin,
By F. D. REED, *Deputy.*

Allowed by

——— ———,
Associate Justice of the Supreme
Court of the United States.

3 [Endorsed:] State of Wisconsin supreme court State of Wisconsin def't in error v. Melvin A. Hoyt pl'ff in error. Petition for writ of error, allowance, citation, and writ of error. Filed Mar. 11 1902 Clarence Kellogg, clerk of supreme court, Wis.

STATE OF WISCONSIN, } ss:
Supreme Court, }

The return to the within writ appears by the schedule hereto annexed.

The return of the justices of the supreme court of the State of Wisconsin.

CLARENCE KELLOGG, *Clerk.*

4 STATE OF WISCONSIN:

Supreme Court.

STATE OF WISCONSIN, Defendant in Error,
vs.
ANDREW J. AIKENS, ALBERT HUEGEN, and MELVIN A. HOYT, Plaintiffs in Error.

To Hon. John B. Cassoday, chief justice of the supreme court of the State of Wisconsin:

The petition of Melvin A. Hoyt, one of the plaintiffs in error, in his own right and behalf respectfully represents that he is a citizen of the State of Wisconsin and of the United States and a resident of the city of Milwaukee in said State, and is there engaged and has been for more than five (5) years last past, in the publication of a daily newspaper called the Milwaukee Daily News. That during the period last aforesaid, the above-named plaintiff in error Andrew J. Aikens was engaged in the publication of another daily newspaper at the city of Milwaukee in said State called the Evening Wisconsin; and during the same period the above-named Albert Huegen was engaged in the publication of another daily newspaper called The Milwaukee Sentinel, both said Aikens and the said Huegen being at all times citizens of the State of Wisconsin and of the United States, residing at the city of Milwaukee, where each and all of the said three papers had been and were then being published by the said plaintiffs in error respectively. That on the 7th day of October A. D. 1901 in the municipal court of Milwaukee county in the said State of Wisconsin, being a court of criminal jurisdiction for said county, an information against the above-named plaintiffs in error was filed by the district attorney of the county of Milwaukee in said State, in pursuance whereof warrants
5 were issued and served upon the said plaintiffs in error respectively, who thereafter, on the date last aforesaid appeared in the said municipal court in pursuance of the filing of such information and the issuing of said warrants. That thereafter on November 11th A. D. 1901, being the day to which the hearing upon said information had been adjourned, your petitioner appeared in

the said municipal court and filed a demurrer to the said information in the office of the clerk of said municipal court, copies of the said information, warrants and return thereon, and of the said demurrer interposed to the said information by your petitioner, being hereto annexed and forming a part of this petition. That thereafter on the 20th day of November A. D. 1901 the day to which said cause had been further adjourned by said municipal court, your petitioner again appeared before the said court in person and by his counsel, and the said State of Wisconsin by the said district attorney of Milwaukee county, when the said demurrer to the said information was argued before the said municipal court and the said demurrer was then and there overruled by the said court; and thereupon your petitioner tendered his exceptions to the said order which said exceptions were reduced to writing and allowed by the court. Whereupon your petitioner then and there signified to the court, that he stood upon his said demurrer and did not desire to plead over. That thereupon the said municipal court found your petitioner guilty as charged in the information, and sentenced him to pay a fine of $150.00 together with 67 and 10/100 dollars' costs, being one-third of the whole costs of said proceedings, and further adjudged that in default of such payment your petitioner be committed to the House of Correction for Milwaukee county until such fine and costs were paid, not, however, in all exceeding 30 days. That thereupon your petitioner, the said Melvin A. Hoyt, then and there duly tendered his exceptions to said findings and judgment of conviction, which exceptions were reduced to writing and allowed; and in order
6 that said proceedings might more certainly appear of record in this cause, the judge of said municipal court did on the 23rd day of November A. D. 1901 by the consent of the said district attorney and your petitioner, sign, seal and certify a bill of exceptions on the part of your petitioner in the cause aforesaid, which said order overruling said demurrer and the exceptions thereto, and the filing of the same in said municipal court and the findings of said court that your petitioner was guilty as charged in the information together with the sentence aforesaid and the judgment of said court thereupon as above set forth, and the exceptions thereto, more clearly appear in the record of the said cause hereto attached and made a part of this petition. That thereupon your petitioner, for the purpose of staying proceedings upon the said judgment aforesaid to wit on the 25th day of November A. D. 1901 duly executed a bond to the State of Wisconsin in the sum of two hundred and fifty (250) dollars, being the sum fixed by said court for that purpose, with two surities and conditioned as required by law, and by the said court, which said bond was on that day duly approved by the judge of the said municipal court and filed in the office of the clerk of the supreme court of the State of Wisconsin on the 26th day of November A. D. 1901, whereby all proceedings in the said cause against your petitioner were stayed until the return of the remittitur from the supreme court of the State of Wisconsin to the municipal court of the county of Milwaukee. That thereafter a writ of error was duly

issued by the supreme court of the State of Wisconsin in the said cause against your petitioner, returnable before said court on the Tuesday before the second Wednesday of January A. D. 1902, and the record in said cause against your petitioner was duly certified and returned by the said municipal court in pursuance of said writ of error to the said supreme court of the State of Wisconsin, prior to the date last aforesaid, and the said cause was duly placed
7 upon the January term calendar of said supreme court of the State of Wisconsin for the year A. D. 1902 for argument and decision by said court. That afterwards on the 1st day of February A. D. 1902 the said State of Wisconsin appearing in the said supreme court by its attorney general, and this petitioner by his counsel, by mutual agreement of the parties, submitted the said cause against your petitioner to the said supreme court for decision, without brief or argument on behalf of the State of Wisconsin, and, upon the joint brief in behalf of your petitioner and the said other plaintiffs in error above named, for decision and final disposition by the said supreme court of the State of Wisconsin.

And your petitioner further alleges that afterwards on the 18th day of February 1902 the said supreme court of the State of Wisconsin decided the said cause removed to it, in favor of the said State of Wisconsin, and against your petitioner, in all respects affirming the rulings, decisions and judgment of the municipal court of Milwaukee county, filing a written opinion therein, a copy whereof is hereto annexed and made a part of this petition. And your petitioner further alleges that the said supreme court of the State of Wisconsin, as he is advised and submits, erred in its judgment in affirming the judgment so removed by said writ of error and thereby deprived your petitioner of his rights, privileges and immunities as a citizen of the State of Wisconsin and of the United States, secured to him in the law. That in the proceedings and hearing of the cause of your petitioner in the supreme court of the State of Wisconsin, there was necessarily drawn in question the validity of a certain statute of the State of Wisconsin as being repugnant to the Constitution of the United States, but which was nevertheless adjudged by the said supreme court of Wisconsin to be a valid statute; that the following is the statute of the State of Wisconsin, being sec. 4466*a* of Sanborn & Berryman's Annotated Statutes of the State of Wisconsin for the Year A. D. 1898:—

8 "Boycotting, strikes, and lockouts."

"Injury to business; restraint of will.

"SECTION 4466*a*. Any two or more persons who shall combine, "associate, agree, mutually undertake or concert together for the "purpose of wilfully or maliciously injuring another in his reputa- "tion, trade, business or profession by any means whatsoever, or for "the purpose of maliciously compelling another to do or perform "any act against his will, or preventing or hindering another from "doing or performing any lawful act shall be punished by imprison-

"ment in the county jail not more than one year or by fine not ex-
"ceeding five hundred dollars."

And your petitioner further avers, that, as he is advised and submits to your honor, that in the decision of the said cause against your petitioner on the 18th day of February A. D. 1902, by the said supreme court of the State of Wisconsin, there was necessarily drawn in question the construction of article XIV of the amendments to the Constitution of the United States, and that such decision of the supreme court of Wisconsin was adverse to said XIV amendment, and the rights of your petitioner thereunder, and in its effect deprived your petitioner of the rights, privileges and immunities secured by the said article XIV of the amendments to the Constitution of the United States, and of the liberty property and due process of law secured to your petitioner by the said article XIV.

And your petitioner hereby offers such security on granting a writ of error, hereinafter prayed, as your honor may require, to the effect, that he will prosecute his writ of error to effect, and, if he fail to make good his plea, shall answer all damages and costs, and prays that the said security shall be taken as a supersedeas and stay of execution upon the judgment returned in said cause.

Wherefore your petitioner prays your honor to grant and allow to him a writ of error from the judgment of the said supreme court of the State of Wisconsin to be issued by the Supreme Court of the United States to the said supreme court of the State of Wis-
9 consin, to the end that the judgment of said supreme court of the State of Wisconsin may be reviewed by the Supreme Court of the United States, and the rights, privileges and immunities secured by the said article XIV of the amendments to the Constitution of the United States and the liberty, property and due process of law thereby secured to your petitioner, may be adjudged and awarded to him, and for such further or other order as may be proper.

MELVIN A. HOYT, *Petitioner.*

UNITED STATES OF AMERICA, } ss:
State of Wisconsin, }

Desiring to give petitioner Melvin A. Hoyt an opportunity to test in the Supreme Court of the United States the question presented in the foregoing petition, it is ordered that a writ of error be allowed to said court, and that the same be made a supersedeas, the bond, in the penal sum of one thousand dollars, herewith presented, being approved.

In testimony witness my hand this 11th day of March A. D. 1902.

JOHN B. CASSODAY,
Chief Justice of the Supreme Court of the State of Wisconsin.

[Endorsed:] Filed Mar. 11 1902 Clarence Kellogg, clerk of supreme court, Wis.

10 STATE OF WISCONSIN:

In Supreme Court.

THE STATE OF WISCONSIN, Defendant in Error,
vs.
ANDREW J. AIKENS, ALBERT HUEGIN, and MELVIN A. HOYT, Plaintiffs in Error.

Writ of error to municipal court, Milwaukee county.

Case.

Newton S. Murphey, counsel for plaintiff in error, Melvin A. Hoyt.

11 In the Supreme Court of the State of Wisconsin, January Term, A. D. 1902.

THE STATE OF WISCONSIN, Defendant in Error,
vs.
ANDREW J. AIKENS, ALBERT HUEGIN, and MELVIN A. Hoyt, Plaintiffs in Error. } State, No. —.

Newton S. Murphey, counsel for plaintiff in Error, Melvin A. Hoyt.
W. H. Bennett, counsel for defendant in error.

Writ of error to the municipal court of Milwaukee county, State of Wisconsin.

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13 *Statement.*

This writ of error was sued out to review the judgment of the municipal court of Milwaukee county, Hon. Geo. W. Burnell, presiding, bearing date November 20, 1901, finding the plaintiff in error herein, guilty of a misdemeanor; to wit, conspiracy to injure another in his trade or business under § 4466*a* of the Statutes of Wisconsin for 1898, and sentencing him to pay a fine of one hundred and fifty (150) dollars, together with sixty-seven and 14/100

(67.10) dollars costs, and in default of payment of such fine and costs to be committed to the House of Correction for Milwaukee county, until such fine and costs are paid, not however to exceed thirty (30) days.

The record follows:—

14 THE STATE OF WISCONSIN
vs.
ALBERT HUEGIN, ANDREW J. AIKENS, MELVIN A. HOYT. } No. 4192.

Record.

W. H. Bennett, district attorney.
W. H. Timlin, attorney for A. J. Aikens.
Van Dyke, Carter & Van Dyke, attorneys for A. Huegin.
N. S. Murphey, attorney for M. A. Hoyt.
Hon. A. C. Brazee, presiding judge.

July 5, 1900.—The original complaint, warrant and all other papers in this case from police court, Milwaukee, received and filed.

July 18, 1900.—All the original papers in this cause sent to the circuit court of Milwaukee county, on a petition of the defendant's counsel for a writ of *habeas corpus*.

July 2, 1901.—All the original papers in this cause returned to the municipal court from the clerk of the circuit court of Milwaukee county.

October 21, 1901.—Came the district attorney for the county of Milwaukee, and in open court filed an information against the above-named defendants, endorsed: State of Wisconsin, municipal court, Milwaukee county, *ss:* I hereby certify that on the 21st day of October, 1901, at the city of Milwaukee, in said county, I arrested the within-named Albert Huegin, Andrew J. Aikens and Melvin A. Hoyt and produced their bodies in court, Theo. Zillmer, sheriff, per Fred Stark, deputy sheriff, fees, etc. Same day defendants severally present in court, whereupon the said defendants were arraigned in open court. Reading of the information waived by the defendants severally. And the said defendants, Andrew J. Aikens and Albert Huegin, each for himself filing a special plea in bar; and the said defendant Melvin A. Hoyt, entering and filing a demurrer to the information.

15 Municipal Court, Milwaukee County.

THE STATE OF WISCONSIN
vs.
ALBERT HUEGIN ET AL.

The judge of the above-mentioned court, having been at the time of the instituting of the prosecution of the above-entitled cause district attorney of Milwaukee county, and having been consulted in

regard to the same, and having been attorney for the prosecution in said cause, and the judge of this court having for said reasons called upon the Hon. George W. Burnell, circuit judge of the third judicial circuit, to attend and hold court during the trial of said cause, and the said circuit judge, the Hon. George W. Burnell, having consented to attend and hold court during the trial of this cause, and having set Wednesday, November 20, 1901, at 10 o'clock a. m. as the date and time when he would so attend and hold court for the trial of said cause, it is hereby

Ordered, that this cause be, and the same hereby is, set for trial in this court, before the said circuit judge, the Hon. Geo. W. Burnell, on the 20th day of November, 1901, at ten o'clock a. m. of said day, and it is hereby further

Ordered, that the clerk of this court shall, in writing, notify the parties in this cause and their respective attorneys of the time and place set for the hearing of said cause, and of the judge who will preside therein.

By the court,

A. C. BRAZEE, *Judge.*

Milwaukee, November 11, 1901.

November 20, 1901.—Defendants with their attorneys all present in open court. Hon. Geo. W. Burnell, presiding judge. Motions of pleas before made argued by counsel and submitted, court ordered that the motion to strike out the plea of the defendants Huegin and Aikens be considered a demurrer, upon application of the district attorney and the defendant's counsel, the defendant's counsel consenting. Court further ordered that the demurrer of the State as to the defendants Huegin and Aikens be sustained, the defendants declining to plead over and stand upon their plea. The demurrer of the defendant Hoyt overruled by the court, and the defendant declines to plead over and stands upon his plea. Recess taken until 2 o'clock p. m. Two o'clock p. m. defendants with their attorneys all present in open court. Cause submitted. Whereupon
16 court called upon the defendants, each of them, to give any reason they might have, why sentence should not be pronounced upon him, and they giving no reason, court did upon the findings and pleadings in this cause, find the said defendants severally guilty as charged in the information aforesaid and did adjudge and determine that the defendants Albert Huegin, Andrew J. Aikens and Melvin A. Hoyt, severally, and each of *you*, pay a fine of one hundred and fifty dollars together with sixty-seven and $\frac{19}{100}$ dollars, costs, each, or in default of the payment of said fine and costs to be committed to the House of Correction of Milwaukee county until said fine and costs are paid, but such imprisonment shall not exceed in all thirty days each. And now comes the defendants severally, by their attorneys and files exceptions to the judgment of the court. Exceptions allowed by the court.

And now comes the defendants, severally and each of them, by

Fines.....	$450.00
Costs	201.31
Total..	$651.31

their attorney, and ask for a stay of proceedings in this cause pending the defendants' appeal to the supreme court, until the remittitur shall be returned herein from said supreme court. Stay granted by the court, and pending the stay of proceedings court ordered that the defendants recognize in the sum of five hundred dollars each. Bail given.

Nov. 26, 1901.—Writ of error as to all of the defendants in above cause from the Hon. John B. Cassoday, chief justice of the State of Wisconsin, filed. Bill of exceptions as to all of the above-named defendants filed. Notice of filing writ of error from defendants' attorneys filed.

Certificate of clerk of municipal court to foregoing record.

Capias.

Filed Oct. 21, 1901.

STATE OF WISCONSIN, ss:

Municipal Court for the City and County of Milwaukee.

The State of Wisconsin to the sheriff of the county of Milwaukee, Greeting:

We command you, that you take Albert Huegin, And. J. Aikens .....and Melvin A. Hoyt.....and them safely keep, so that you may have their bodies before the municipal [SEAL.] court of the county of Milwaukee aforesaid, at the court-room in Milwaukee, forthwith then and there to answer 17 unto an information pending against them in said court for conspiracy ..... to injure ..... which shall then and there be made to appear, and of this writ make due return.

Witness, the Hon. A. C. Brazee, judge of the municipal court of said county and city at Milwaukee, the 21st day of October in the year of our Lord one thousand nine hundred and one.

FRANK E. WOLLER,
Clerk of the Municipal Court,
By V. DALLY, *Deputy.*

—— ——, *Attorneys.*

STATE OF WISCONSIN, ss:

Municipal Court, Milwaukee County.

I hereby certify that on the twenty-first (21st) day of October, 1901, at the city of Milwaukee, in said county, I arrested the within-named Albert Huegin, And. J. Aikens and Melvin A. Hoyt, and produced their bodies in court.

Fees.

Service	$2.00
Travel	.20
Attendance	4.50
Return	.25
Total	$6.95

Filed Oct. 21, 1901.

THEODORE ZILLMER, *Sheriff*,
Per FRED STARK, *Dep. Sheriff.*

18 *Information for Conspiracy.*

Filed Oct. 21, 1901.

Municipal Court, Milwaukee County.

THE STATE OF WISCONSIN, Plaintiff,
vs.
ANDREW J. AIKENS, ALBERT HUEGIN, and MELVIN A. HOYT, Def'a.

I, W. H. Bennett, district attorney for Milwaukee county, hereby inform the court that on the 5th day of April, in the year one thousand nine hundred, at the city of Milwaukee, and within said county of Milwaukee, Wisconsin, Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt did, then and there, unlawfully conspire, combine, confederate, associate, agree, mutually undertake and concert together for the purpose and with the intent then and there of wilfully and maliciously injuring the Journal Company, a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, in its trade and business and for the purpose and with the intent then and there of wilfully and maliciously injuring Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum, and each of them, in their trade, business and occupation; that the said, The Journal Company, at all of said times was, ever since has been and now is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin as aforesaid, and at all of said times was and now is the owner and publisher of a daily newspaper and advertising medium known as the Milwaukee Journal, published at the said city of Milwaukee, which said newspaper at all of the times herein referred to had, and now has, a large circulation as a newspaper and advertising medium in the city of Milwaukee and throughout the State of Wisconsin and elsewhere; that it was at all of said times, and now is, the business and trade of said The Journal Company to publish said newspaper and to sell and furnish the same to its patrons and subscribers and to solicit, receive, print and publish in said newspaper for hire advertisements for merchants and other persons as is customary with such newspapers, and that at all of said times and especially at the time of the said combination and con-

19 spiracy, and subsequently thereto, the said The Journal Company had a large number of advertisers or patrons who

advertised in said newspaper, the Milwaukee Journal, and that a large proportion of the revenue of said The Journal Company was and is derived from such advertisements; that the said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum were at all of said times and now are, stockholders in said The Journal Company, and financially interested in the business and success of said The Journal Company; that the business and trade of the said Lucius W. Nieman is, among other things, that of editor of said The Milwaukee Journal, and the business and trade of said Lloyd T. Boyd is that of business manager of said The Journal Company and of said The Milwaukee Journal; and that at all of said times the business of said John W. Schaum was and is that of treasurer of said The Journal Company.

That the prices for advertisements and the advertising rates which newspapers such as said The Milwaukee Journal and the other newspapers herein mentioned are entitled to charge, and which advertisers and patrons are willing to pay, depend and are based largely upon the circulation of such papers and the number of their readers; that early in the year A. D. 1900 said The Journal Company in good faith established a new rate for advertising in said The Milwaukee Journal, based, among other things, upon its increased circulation, and notified the patrons of and advertisers in the said The Milwaukee Journal thereof, which said rate for advertising was an increase of about 25 per cent. above that which was charged by said The Journal Company for like advertising in the year 1899.

That at all of said times the said Andrew J. Aikens was and now is the business manager of the Evening Wisconsin, a daily newspaper published in the city of Milwaukee and having also an extensive circulation and devoted to the purposes of a general newspaper and to advertising for hire, like unto the said The Milwaukee Journal; that at all of said times said Albert Huegin was the business manager of the Milwaukee Sentinel, a daily newspaper published at the city of Milwaukee having an extensive circulation and devoted to the purposes of a general newspaper and to advertise for hire, like unto the newspapers aforementioned; that at all of said times said Melvin A. Hoyt was and now is the editor of the Milwaukee Daily News, and the president of the News Publishing Company, the corporation owning said The Milwaukee Daily News, a daily newspaper published at the city of Milwaukee and devoted to the purposes of a general newspaper and to advertising for hire, like unto the other of said newspapers.

That on or about the 5th day of April, A. D. 1900, the exact date whereof being unknown to affiants, said Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt, with others unknown to affiant, in furtherance and in pursuance of said unlawful conspiracy, combination, confederation, association, agreement and mutual understanding, for the purpose and with the intent then and there of wilfully, maliciously and unlawfully injuring said The Journal Company in its trade and business, and also said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum, and each of them, in their trade and business and to that end and with the purpose and intent aforesaid,

did confederate, agree and mutually undertake that if any merchant or other person or corporation advertising or proposing to advertise in said The Milwaukee Journal, should pay or agree to pay to said The Journal Company the increased rate for advertising established or fixed by it as aforesaid, that then and in that case any such person or corporation should not be permitted to advertise in any of said other three newspapers, to wit: said The Milwaukee Sentinel, The Evening Wisconsin and The Milwaukee Daily News, unless such merchant, other person or corporation should advertise in each of said three papers and pay to each of them or to the respective owners or proprietors of them a corresponding increase over the rates respectively theretofore charged by such other three newspapers respectively, to wit: about 25 per cent. in excess of what said last-mentioned three papers respectively were then charging and had theretofore charged for advertising; but that in case any merchant, other person or corporation should refuse to pay to said The Journal Company the said increased rate established by it as aforesaid for advertising in said The Milwaukee Journal, then and in that case such merchant or other person or corporation so refusing should be at liberty to advertise in any or all of the other of said three newspapers at the rates which had theretofore been charged by said other three newspapers respectively; that a large number of merchants in the city of Milwaukee and other persons were at the time of said combination and agreement, and subsequently thereto, advertising in all of said newspapers, to wit: The Milwaukee Journal, The Evening Wisconsin, The Milwaukee Sentinel and The Milwaukee Daily News, and that the right or privilege to advertise in
21 two or more of said papers was and is considered and regarded by a large number of such merchants and other persons as a valuable right and privilege and one much to be desired; that all or the greater part of the patrons of and persons advertising in said The Milwaukee Journal were, pursuant to said combination and conspiracy on the part of said Aikens, Huegin and Hoyt, and in furtherance thereof, notified by them of the said agreement, conspiracy and combination between said Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt; that many of the patrons and advertisers in said The Milwaukee Journal were induced thereby to withdraw their advertisements therefrom, greatly to the injury of the business and trade of said The Journal Company and of said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum; that pursuant to said combination, agreement, confederation and conspiracy, and in furtherance thereof, said Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt did refuse to allow the advertisements of divers merchants and other persons to be inserted in either The Milwaukee Sentinel, The Evening Wisconsin or The Milwaukee Daily News aforesaid, and did prevent the advertisements of divers merchants and other persons from appearing in all or any of said last three mentioned newspapers because such merchant or other persons so prevented had paid or agreed to pay to said The Journal Company the said increased rate for advertising established by it as aforesaid; and that by reason of said combination, conspiracy and

agreement many merchants in the city of Milwaukee and elsewhere, and other persons, were prevented from advertising in said The Milwaukee Journal, greatly to the injury of the business and trade of said The Journal Company and of said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum, and of each of them, contrary to the statutes in such case made and provided, and against the peace and dignity of the State of Wisconsin.

Dated at Milwaukee, in said county, this seventh day of October, in the year one thousand nine hundred and one.

(Signed) W. H. BENNETT,
District Attorney, Milwaukee County, Wis.

Filed Oct. 21, 1901.

Endorsed thereon:

Prisoners arraigned in open court this 21st day of October, 1901, and the said defendants Andrew J. Aikens and Albert Huegin each for himself filing a special plea in bar, and the said defendant Melvin A. Hoyt entering and filing a demurrer to the information.

A. C. BRAZEE,
Municipal Judge.

22 Plea of defendant Andrew J. Aikens.

Filed Oct. 21, 1901.

Order calling in Judge Burnell and setting case for trial.

Dated Nov. 11, 1901. Filed Nov. 11, 1901.

Clerk's notice of time of hearing case.

Dated Nov. 11, 1901. Served Nov. 12, 1901. Filed Nov. 16, 1901.

Verified demurrer by district attorney and notice of motion thereon to strike out special plea of defendant Andrew J. Aikens.

(Served on Andrew J. Aikens.)

Dated Nov. 14, 1901. Served Nov. 15, 1901. Filed Nov. 20, 1901.

Same as above.

(Served on Timlin, Glicksman & Conway.)

Dated Nov. 14, 1901. Served Nov. 15, 1901. Filed Nov. 20, 1901.

Exceptions of defendant Andrew J. Aikens to judgment of court of Nov. 20, 1901.

Dated Nov. 20, 1901. Filed Nov. 20, 1901.

Recognizance of defendant Andrew J. Aikens in sum of $500.

Approved and filed Nov. 20, 1901.

Bill of exceptions of defendant Andrew J. Aikens.

Served Nov. 25, 1901. Filed Nov. 26, 1901.

Notice of filing writ of error of defendant Andrew J. Aikens, with copy of said writ of error.

Served and filed Nov. 26, 1901.

23 Plea of defendant Albert Huegin.

Filed Oct. 21, 1901.

Verified demurrer by district attorney, and notice of motion thereon to strike out special plea of defendant Albert Huegin.

(Served on Albert Huegin.)

Dated Nov. 14, 1901. Served Nov. 15, 1901. Filed Nov. 20, 1901.

Same as above.

(Served on Van Dyke, Van Dyke & Carter.)

Dated Nov. 14, 1901. Served Nov. 15, 1901. Filed Nov. 20, 1901.

Exceptions of defendant Albert Huegin to judgment of court of Nov. 20, 1901.

Dated and filed Nov. 20, 1901.

Recognizance of defendant Albert Huegin in sum of $500.

Approved and filed Nov. 20, 1901.

Bill of exceptions of defendant Albert Huegin.

Filed Nov. 26, 1901.

Notice of filing writ of error of defendant Albert Huegin, with copy of said writ of error.

Served and filed Nov. 26, 1901.

24 *Demurrer of Defendant Melvin A. Hoyt.*

Filed Oct. 21, 1901.

Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
MELVIN A. HOYT, ANDREW J. AIKENS, and ALBERT HUEGIN, Defendants.

And the said Melvin A. Hoyt separately and in his own proper person, cometh into court here, and having heard the information

read, saith that the said information, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that he is not bound by the law of the land to answer the same; and in addition thereto this defendant alleges, the following special objections to the said information, to wit:

(1.) That the said several alleged conspiracies, combinations, confederations, associations, agreements and mutual understandings between this defendant and the other defendants named in the said information, were such conspiracies, combinations, confederations, associations, agreements and understandings as this defendant and the said other defendants had a lawful right to make and enter into as forming a part of their legitimate trade and competition between the said defendants with the said Journal Company and its officers and stockholders in the lawful conduct of the business of this defendant and the said other defendants as publishers of the newspapers respectively conducted by the said defendants, and the said Journal Company.

(2.) That the several acts charged in the said information as having been performed by this defendant and the said other defendants, do not state any criminal offense known to the law, but such acts, and each and every of them, were lawful and legitimate acts of competition in trade such as this defendant and said other defendants had lawful right to perform in the law.

(3.) That the said several alleged conspiracies, combinations, confederations, associations, agreements and mutual understandings had between this defendant and the said other defendants Andrew J. Aikens and Albert Huegin, were such conspiracies, combinations, associations, agreements and mutual understandings as this defendant and the said other defendants, as citizens of the United States and the State of Wisconsin, had lawful right to make and enter into in the conduct and management of the said several newspapers so published by this defendant and the said other defendants, Andrew J. Aikens and the said Albert Huegin respectively, under the Constitution and laws of the United States, and especially under and by virtue of the provisions of article XIV of the amendments to the Constitution of the United States, and this defendant claims the protection thereof.

(4.) That the several acts charged therein, as having been done and performed by this defendant and the said other defendants, Andrew J. Aikens and Albert Huegin, in furtherance of the said alleged several conspiracies, combinations, confederations, associations, agreements and mutual understandings between this defendant and the said other defendants, were severally and respectively such acts as this defendant and the said other defendants had lawful right to do and perform as citizens of the United States and of the State of Wisconsin, as lawful and legitimate conspiracies, combinations, confederations, associations, agreements and mutual understandings, in the conduct of the business of this defendant and the publications of his said newspaper, and that of the newspapers of said other defendants, and in the publication of the said newspapers

published by them respectively, and that such acts were innocent acts and lawful acts of competition in the trade and business of this defendant and in the trade and business of the said other defendants, under the Constitution and laws of the United States and especially under the provisions of article XIV of the amendments to the Constitution of the United States, and this defendant claims the protection thereof.

(5.) And because the said information does not state any fact or facts which constitute a criminal offense known to the laws of the State of Wisconsin, but the acts so charged were and are legitimate acts of trade and competition such as any citizen of said State might lawfully employ in the conduct of his business; and this he is ready to verify.

Wherefore, for want of a sufficient information in this behalf,
26 the said Melvin A. Hoyt prays judgment, and that by this court here he may be dismissed and discharged from the said premises in the said information specified.

NEWTON S. MURPHEY,
Attorney for Melvin A. Hoyt, One of the Defendants.

Filed Oct. 21, 1901.

Exceptions of defendant Melvin A. Hoyt to judgment of court of Nov. 20, 1901.

Dated and filed Nov. 20, 1901.

Recognizance of defendant Melvin A. Hoyt in sum of $500.

Approved and filed Nov. 20, 1901.

Bill of exceptions of defendant Melvin A. Hoyt.

Filed Nov. 26, 1901.

STATE OF WISCONSIN:

Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
MELVIN A. HOYT ET AL., Defendants.

At a regular term of said court holden on November 20, A. D. 1901, Honorable George W. Burnell, judge presiding, who having been called in by Judge A. C. Brazee for the reason that the latter judge was disqualified to try said cause, having heretofore acted for the said State in this matter, as district attorney for the county of Milwaukee, the State of Wisconsin appearing by W. H. Bennett, district attorney of Milwaukee county, and the accused defendant Melvin A. Hoyt aforesaid appearing by Newton S. Murphey, his attorney, and the following proceedings were had: The said cause

coming on to be heard upon the demurrer heretofore filed by the said defendant Melvin A. Hoyt to the information filed herein by said district attorney, and after hearing the said district attorney for the State in opposition to the said demurrer, and the defendant Melvin A. Hoyt by his said attorney in support thereof, and
27 the court being advised in the premises, whereupon the court ordered that the said demurrer of the said defendant Melvin A. Hoyt be and the same was thereby overruled, to which ruling the said defendant Melvin A. Hoyt then and there duly excepted, which exception was reduced to writing and then and there allowed, whereupon the said accused defendant Melvin A. Hoyt declared that he stood upon said demurrer and did not desire to plead over. The court thereupon found the said defendant Melvin A. Hoyt guilty as charged in the information and sentenced him to pay a fine of one hundred and fifty dollars, together with sixty-seven and $\frac{10}{100}$ dollars costs, being one-third of the whole cost of this proceeding, and in default of such payment be committed to the House of Correction for Milwaukee county until such fine and costs are paid, not, however, in all exceeding thirty days. Whereupon the said defendant Melvin A. Hoyt then and there duly tendered his exception to said finding and judgment of conviction, which exception was reduced to writing and allowed; and in order that said proceedings had may more certainly appear of record in this cause the foregoing is by consent of both parties this day signed, sealed and certified by me as and for a bill of exceptions on the part of the said accused defendant Melvin A. Hoyt in the cause aforesaid.

Dated November 23, A. D. 1901.

GEORGE W. BURNELL, [SEAL.]
Judge, Presiding.

Filed Nov. 26, 1901.

28 Certificate of clerk to transcript of record.

Return of clerk to writ of error.

Dated Dec. 4, 1901.

Writ of error from supreme court of State of Wisconsin to municipal court of Milwaukee county.

Filed Nov. 26, 1901.

29 STATE OF WISCONSIN:

In Supreme Court.

ANDREW J. AIKENS, Plaintiff in Error,
vs.
STATE OF WISCONSIN, Defendant in Error.

ALBERT HUEGIN, Plaintiff in Error,
vs.
STATE OF WISCONSIN, Defendant in Error.

MELVIN A. HOYT, Plaintiff in Error,
vs.
STATE OF WISCONSIN, Defendant in Error.

Each of the plaintiffs in error sued out his proper writ to review a judgment of the municipal court of Milwaukee county, adjudging him guilty of having committed an offense by violating section 4466*a* R. S. 1898, as charged in the information. The sufficiency of the complaint upon which the plaintiffs in error were originally charged and brought before a magistrate for their preliminary examination, and the constitutionality of sec. 4466*a id.*, were considered by this court and sustained on a review of *habeas corpus* proceedings on writs of error, the causes being reported in 110 Wis., p. 189. On such review there was no question but that the complaint fully satisfied the statute. It was challenged, and the statute as well, on constitutional grounds. After such decision the causes were remanded for further proceedings according to law, whereupon an information was duly filed, charging the accused persons in all respects substantially as in the complaint, which had been passed upon as aforesaid.

Upon being duly arraigned upon such information, Andrew J. Aikens and Albert Huegin separately filed pleas admitting the charge made against them, but insisting that the same did
30 not constitute a criminal offense, assigning in support thereof the same reasons as those formerly urged and passed upon by this court as aforesaid. Melvin A. Hoyt, being duly arraigned upon the information, took the same course as his associates by demurring to such information. The special pleas and the demurrer to the information were overruled. The plaintiffs in error thereupon, each in his own behalf, refused to plead over to the information, admitted all the allegations thereof, but insisted that the acts charged do not constitute a punishable offense. Thereupon the plaintiffs in error were severally adjudged guilty as charged in the information, and punishment therefor was duly imposed by the judgment of the court. Thereupon these writs of error were sued out to review such judgments.

MARSHALL, *J.*:

From the foregoing statement it appears that all the questions raised in the court below by plaintiffs in error were considered and decided against them in State *v.* Aikens, State *v.* Huegin, and State *v.* Hoyt, 110 Wis. 189. The trial court followed that decision as it was bound to do. As we understand the matter the information contains the same charge as the one set forth in the complaint, the plaintiffs in error in effect plead guilty thereto, admitting the doing of all the acts charged against them, and they were thereupon duly adjudged guilty and sentenced. In that view the judgments must be affirmed, as all questions in regard to the matters are *res adjudicata*, as before indicated.

By the COURT: The judgment as to each of the plaintiffs in error is affirmed.

31 UNITED STATES OF AMERICA, *ss*:

To the State of Wisconsin, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Wisconsin, wherein Melvin A. Hoyt is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. John B. Cassoday, chief justice of the supreme court of the State of Wisconsin this 11th day of March, in the year of our Lord one thousand nine hundred and two.

JOHN B. CASSODAY,
Chief Justice of the Supreme Court of the State of Wisconsin.

Madison, Wis., March 11, 1902.—Received copy of the above and foregoing citation.

E. B. HICKS,
Att'y General for the State of Wisconsin.

32 Supreme Court of the United States.

STATE OF WISCONSIN, Defendant in Error,
vs.
ANDREW J. AIKENS, ALBERT HUEGIN, and MELVIN A. HOYT, Plaintiffs in Error.

Know all men by these presents, that we, William H. Park and Newton S. Murphey of Milwaukee, Wisconsin, are held and firmly bound unto the State of Wisconsin in the sum of one thousand (1,000) dollars, to be paid to the said State of Wisconsin or its assigns.

To which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 10th day of March, A. D. 1902.

Whereas the above-named Melvin A. Hoyt, one of the said plaintiffs in error, hath in his own right prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Wisconsin,

Now therefore the condition of this obligation is such that if the above-named Melvin A. Hoyt shall prosecute his said writ of error to effect and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

WILLIAM H. PARK. [SEAL.]
NEWTON S. MURPHEY. [SEAL.]

Signed, sealed and delivered in presence of—

A. G. MILLER.
HERBERT N. LAFLIN.

33 UNITED STATES OF AMERICA, } ss:
State of Wisconsin, }

On this tenth day of March, A. D. 1902, personally appeared before me William H. Park and Newton S. Murphey, who signed the above and foregoing bond, and being each duly sworn, doth, each for himself, depose and say that he is a resident of the city and county of Milwaukee, in the State of Wisconsin, and is worth the sum of two thousand (2,000) dollars over and above all debts and exemptions.

WILLIAM H. PARK.
NEWTON S. MURPHEY.

Subscribed and sworn to before me this tenth day of March, A. D. 1902.

A. G. MILLER,
[SEAL.] *Notary Public, Milwaukee, Wis.*

34 [Endorsed:] State of Wisconsin supreme court. State of Wisconsin, def't in error, *vs.* Melvin A. Hoyt, pl't'ffs in error. Bond on writ of error. The within bond is hereby approved March 11, 1902. John B. Cassoday, chief justice of supreme court of the State of Wisconsin. Filed March 11, 1902. Clarence Kellogg, clerk of supreme court, Wis.

35 STATE OF WISCONSIN:

Supreme Court.

STATE OF WISCONSIN, Defendant in Error,
vs.
MELVIN A. HOYT, Plaintiff in Error.

Melvin A. Hoyt, the plaintiff in error in the above-entitled cause, files the following assignments of error upon which he will rely to wit:

(1.) The supreme court of the State of Wisconsin erred in affirming the judgment of the municipal court of Milwaukee county in the State of Wisconsin, which overruled by its judgment the demurrer filed by the said Melvin A. Hoyt to the information filed in the said municipal court, and in holding that the said information stated a criminal offense.

(2.) The supreme court of the State of Wisconsin erred in affirming by its judgment the findings and judgment of the said municipal court of the county of Milwaukee, in said State, and in adjudging the said Melvin A. Hoyt, plaintiff in error, guilty of a conspiracy as charged in the information filed in said last-mentioned court, and in imposing a fine and sentence in pursuance thereof on him, the said Melvin A. Hoyt.

(3.) And the said supreme court of the State of Wisconsin further erred in affirming the judgment of the said municipal court in holding and adjudging that all or any of the several acts charged in the said information to have been performed, or done, by the said

36 Melvin A. Hoyt, or agreed to be done, or performed, by him singly or in combination with Andrew J. Aikens and Albert Huegen, the said coplaintiff in error with the said Melvin A. Hoyt, or either of them, were criminal, unlawful or prohibited combinations.

(4.) That the said supreme court of the State of Wisconsin further erred by its said judgment by holding and adjudging that the provisions of article 14 (XIV) of the amendments of the Constitution of the United States, though a construction of said article 14 was thereby necessarily drawn in question in such adjudication, was not a protection in the law of the said Melvin A. Hoyt against any combination act or acts charged in said information to have been done, or agreed to be done by the said Melvin A. Hoyt, either singly, or in combination with the said Andrew J. Aikens and Albert Huegen, or either of them, whereby the said Melvin A. Hoyt was deprived of his rights, privileges and immunities secured to him by the said article 14 of the amendments of the Constitution of the United States, and of the liberty, property and due process of law secured to him as a citizen of the United States and of the State of Wisconsin.

(5.) And the said supreme court of the State of Wisconsin further erred in holding and adjudging that section 4466*a* of Sanborn & Berryman's edition of the Revised Statutes of the State of Wisconsin

for the year A. D. 1898, though necessarily drawn in question in the aforesaid judgment of the said supreme court of the State of Wisconsin, was valid, and that the same was not repugnant to the Constitution of the United States, and especially to the said article 14 of the amendments to said Constitution, and in sustaining the validity of said statute, and by holding as it did hold, a valid enactment, whereby the said Melvin A. Hoyt was deprived of his rights,
37 privileges and immunities as a citizen of the United States and of the State of Wisconsin, and of the liberty, property and due process of law secured to him by the said article 14 of the amendments to the Constitution of the United States.

And the said Melvin A. Hoyt prays that the judgment aforesaid may be reversed, annul-ed and altogether held for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment.

NEWTON S. MURPHEY,
Attorney for the Plaintiff in Error, Melvin A. Hoyt.

38 [Endorsed:] State of Wisconsin supreme court State of Wisconsin def't in error *v.* Melvin A. Hoyt plaintiff in error. Assignment of errors. Original Filed Mar. 11 1902 Clarence Kellogg, clerk of supreme court, Wis. Newton S. Murphey att'y for pl'ff in error Melvin A. Hoyt.

39 Pleas before the supreme court of the State of Wisconsin, at a term thereof begun and held at the capitol, in Madison, the seat of government of said State, on the first Tuesday, to wit, the seventh day of January, A. D. 1902.

Present: John B. Cassoday, chief justice, John B. Winslow, Roujet D. Marshall, Charles V. Bardeen, and Joshua Eric Dodge, justices.

CLARENCE KELLOGG, *Clerk.*

Be it remembered that heretofore, to wit: on the fifth day of December, in the year of our Lord one thousand nine hundred and one, came into the office of the clerk of the supreme court of the State of Wisconsin, Melvin A. Hoyt, and filed in said court his certain bond on writ of error; and on the sixth day of December, in the year of our Lord one thousand nine hundred and one, came into the office of the clerk of the supreme court of the State of Wisconsin, the said Melvin A. Hoyt, and filed in said court his certain writ of error, according to the statute in such case made and provided, and also the return to such writ of error, of the clerk of the municipal court of Milwaukee county, in said State, in the words and figures following, that is to say:

40 Know all men by these presents, that we, Melvin A. Hoyt as principal and W. H. Park and Henry J. Baumgartner as sureties, all of the city of Milwaukee in the State of Wisconsin, are held and firmly bound unto the State of Wisconsin in the sum of two hundred and fifty dollars ($250) to be paid to the said State of

Wisconsin, its representatives or assigns; to which payment well and truly to be made, we do hereby bind ourselves, our heirs, executors and administrators, jointly and severally and firmly by these presents.

Sealed with our seals the 25th day of November, A. D. 1901.

Whereas, in a criminal action pending in the municipal court of Milwaukee county, in said State, wherein The State of Wisconsin was plaintiff and the said Melvin A. Hoyt, Andrew J. Aikens and Albert Huegin were defendants, was on the 26th day of November, A. D. 1901, tried and disposed of by the said municipal court of Milwaukee county and a final judgment therein rendered in favor of the State of Wisconsin and against the said Melvin A. Hoyt, whereby the said Melvin A. Hoyt was adjudged and declared by the said court to be guilty as charged in the information filed in said court against him, the said Melvin A. Hoyt, and the said Melvin A. Hoyt was thereupon sentenced and adjudged to pay a fine of one hundred and fifty ($150) dollars together with sixty-seven and 10/100 dollars costs of suit and in default of such payment, to be committed to the House of Correction for Milwaukee county until such fine and costs were paid, not, however, in all exceeding 30 days.

And, whereas, the said Melvin A. Hoyt has procured the issue of a writ of error from the supreme court of the State of Wisconsin returnable to that court on the Tuesday before the second Wednesday in January of the year A. D. 1902, to review the said judgment.

Now therefore the condition of this obligation is such, that if the said Melvin A. Hoyt shall pay all costs and damages which may be awarded against him on said writ of error, and shall pay and abide the judgment of the court therein, not exceeding the aforesaid sum, then this obligation to be void, otherwise of full force and validity.

MELVIN A. HOYT. [SEAL.]
W. H. PARK. [SEAL.]
H. J. BAUMGARTNER. [SEAL.]

In presence of
N. S. MURPHY.
DOROTHY KADING.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

We, W. H. Park and Henry J. Baumgartner, being each duly sworn doth each for himself depose and say that he is one of the sureties in the above and foregoing bond and that he is a resident of the city of Milwaukee in the State of Wisconsin; that he is worth the sum of $500 over and above all his debts and liabilities, in property within this State not, by law, exempt from execution.

W. H. PARK.
H. J. BAUMGARTNER.

Subscribed and sworn to before me, this 25th day of November, A. D. 1901.

A. G. MILLER,
Notary Public, Milwaukee County, Wisconsin.

(Endorsements:) Supreme court. State of Wisconsin *v.* Melvin A. Hoyt *et al.* Bond on writ of error to municipal court of Milwaukee county. N. S. Murphey, att'y for Hoyt, plaintiff in error. I approve the within bond both as to form and sufficiency of surety this 26th day of Nov., 1901. Clarence Kellogg, cl'k sup. ct. Filed Nov. 26, 1901. Clarence Kellogg, clerk of supreme court, Wis.

41 STATE OF WISCONSIN, } ss:
Supreme Court, }

The State of Wisconsin to the judge of the municipal court of the county of Milwaukee, in said State, Greeting:

Because, in the record and proceedings, and also in the rendition of judgment, in a suit which was duly tried in the municipal court of Milwaukee county aforesaid, before you, between The State of Wisconsin plaintiff, and Melvin A. Hoyt, Andrew J. Aikens and Albert Huegin defendants, in a criminal action for conspiracy to injure manifest error hath intervened to the great damage of the said Melvin A. Hoyt, one of said defendants as by his complaint we are informed. And we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid, do command you, that if judgment be thereupon given, then you send to the judges of the supreme court of the State of Wisconsin, distinctly and openly, under your seal, with all convenient dispatch, a transcript of the record and proceedings of the suit aforesaid, with all things concerning the same, and this writ so that they may have the same at the next term of our said supreme court, to be held at Madison, in the State aforesaid, on the Tuesday before the second Wednesday of January, A. D. 1902 anno Domini one thousand nine hundred and two that the record and proceedings aforesaid, being inspected, we may cause to be further done, for correcting that error, what of right, and according to law and the rule of our said court, ought to be done.

Witness, the Hon. John B. Cassoday, chief justice of the
[SEAL.] supreme court of the State of Wisconsin, at Madison, this twenty-fifth day of November, A. D. 1901.

Attest: CLARENCE KELLOGG, *Clerk.*

[Endorsed:] State of Wisconsin, supreme court. State of Wisconsin, against Melvin A. Hoyt *et al.* Writ of error. Filed Nov. 26, 1901. Frank E. Woller, clerk of municipal court. Filed Dec. 6, 1901. Clarence Kellogg, clerk of supreme court, Wis.

42 THE STATE OF WISCONSIN
vs.
ALBERT HUEGIN, ANDREW J. AIKENS, MELVIN A. HOYT. } No. 4192.

W. H. Bennett, district attorney.
W. H. Timlin, attorney for A. J. Aikens.
Van Dyke, Carter & Van Dyke, attorneys for A. Huegin.
N. S. Murphey, attorney for M. A. Hoyt.
Hon. A. C. Brazee, presiding judge.

July 5, 1901.—The original complaint, warrant and all other papers in this case from police court, Milwaukee, received and filed.

July 18, 1900.—All the original papers in this cause sent to the circuit court of Milwaukee county; on a petition of the defendants' counsel for a writ of *habeas corpus*.

July 2, 1901.—All the original papers in this cause returned to the municipal court from the clerk of the circuit court of Milwaukee county.

October 21, 1901.—Came the district attorney for the county of Milwaukee, and in open court filed an information against the above-named defendants, endorsed: State of Wisconsin, municipal court, Milwaukee county, *ss.* I hereby certify that on the 21st day of October, 1901, at the city of Milwaukee, in said county, I arrested the within-named Albert Huegin, Andrew J. Aikens and Melvin A. Hoyt and produced their bodies in court. Theo. Zillmer, sheriff, per Fred Stark, deputy sheriff, fees, etc. Same day defendants severally present in court, whereupon the said defendants were arraigned in open court. Reading of the information waived by the defendants severally. And the said defendants, Andrew J. Aikens and Albert Huegin, each for himself filing a special plea in bar; and the said defendant Melvin A. Hoyt, entering and filing a demurrer to the information.

43 Municipal Court, Milwaukee County.

THE STATE OF WISCONSIN
vs.
ALBERT HUEGIN ET AL.

The judge of the above-mentioned court, having been at the time of the instituting of the prosecution of the above-entitled cause district attorney of Milwaukee county, and having been consulted in regard to the same, and having been attorney for the prosecution in said cause, and the judge of this court having for said reasons called upon the Hon. George W. Burnell, circuit judge of the third judicial circuit, to attend and hold court during the trial of said cause, and the said circuit judge, the Hon. George W. Burnell, having consented to attend and hold court during the trial of this cause, and having set Wednesday, November 20, 1901, at ten o'clock m. as the date and time when he would so attend and hold court the trial of said cause, it is hereby

Ordered, that this cause be, and the same hereby is, set for trial

in this court, before the said circuit judge, the Hon. Geo. W. Burnell, on the 20th day of November, 1901, at ten o'clock a. m. of said day, and it is hereby further

Ordered, that the clerk of this court shall, in writing, notify the parties in this cause and their respective attorneys of the time and place set for the hearing of said cause, and of the judge who will preside therein.

By the court,

A. C. BRAZEE, *Judge.*

Milwaukee, November 11, 1901.

November 20, 1901.—Defendants with their attorneys all present in open court. Hon. Geo. W. Burnell, presiding judge. Motions of pleas before made argued by counsel and submitted, court ordered that the motion to strike out the plea of the defendants Huegin and Aikens be considered a demurrer, upon application of the district attorney and the defendants' counsel, the defendants' counsel consenting. Court further ordered that the demurrer of the State as to the defendants Huegin and Aikens be sustained, the defendants declining to plead over and stand upon their plea. The demurrer of the defendant Hoyt overruled by the court, and the defendant declines to plead over and stands upon his plea. Recess taken until 2 o'clock p. m. Two o'clock p. m. defendants with their attorneys all present in open court.

Cause submitted. Whereupon court called upon the de-
44 fendants, each of them, to give any reason they might have, why sentence should not be pronounced upon him, and they giving no reason, court did upon the findings and pleadings in this cause, find the said defendants severally guilty as charged in the information aforesaid and did adjudge and determine that the defendants Albert Huegin, Andrew J. Aikens and Melvin A. Hoyt, severally, and each of *you*, pay a fine of one hundred and fifty dollars together with sixty-seven and $\frac{10}{100}$ dollars, costs, each, or in default of the payment of said fine and costs to be committed to the House of Correction of Milwaukee county until said fine and costs are paid, but such imprisonment shall not exceed in all thirty days each. And now comes the defendants severally, by their attorneys and files exceptions to the judgment of the court. Exceptions allowed by the court.

Fines.....	$450.00
Costs.....	201.31
Total..	$651.31

And now comes the defendants, severally and each of them, by their attorney, and ask for a stay of proceedings in this cause pending the defendants' appeal to the supreme court, until the remittitur shall be returned herein from said supreme court. Stay granted by the court, and pending the stay of proceedings court ordered that the defendants recognize in the sum of five hundred dollars each. Bail given.

Nov. 26, 1901.—Writ of error as to all of the defendants in above cause from the Hon. John B. Cassoday, chief justice of the State of Wisconsin, filed. Bill of exceptions as to all of the above-named

defendants filed. Notice of filing writ of error from defendants' attorneys filed.

45 STATE OF WISCONSIN, } ss:
Municipal Court, Milwaukee County, }

I, Frank E. Woller, clerk of the municipal court, do hereby certify that I have compared the foregoing copy with the original record entered in the action therein entitled, that it is a correct transcript therefrom and of the whole thereof, as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said court, this fourth day of December, A. D. 1901.

FRANK E. WOLLER,
Clerk of the Municipal Court.

46 *Capias.*

STATE OF WISCONSIN, ss:

Municipal Court for the City and County of Milwaukee.

The State of Wisconsin to the sheriff of the county of Milwaukee, Greeting:

We command you, that you take Albert Huegin And. J. Aikens ..... and Melvin A. Hoyt ..... and them safely keep, so that you may have their bodies before the municipal court of the county of Milwaukee aforesaid, at the court-room [SEAL.] in Milwaukee, forthwith then and there to answer unto an information pending against them in said court for conspiracy ..... to injure ..... which shall then and there be made to appear, and of this writ make due return.

Witness, the Hon. A. C. Brazee, judge of the municipal court of said county and city at Milwaukee, the 21st day of October in the year of our Lord one thousand nine hundred and one.

FRANK E. WOLLER,
Clerk of the Municipal Court,
By THOS. V. DALLY, *Deputy.*

—— ——, *Attorneys.*

(Endorsements.)

STATE OF WISCONSIN, } ss:
Municipal Court, Milwaukee County, }

I hereby certify that on the twenty-first day of October, 1901, at the city of Milwaukee, in said county, I arrested the within-named Albert Huegin, And. J. Aikens and Melvin A. Hoyt, and produced their bodies in court.

Fees.

Service	$2.00
Travel	.20
Attendance	4.50
Return	.25
Total	$6.95

THEODORE ZILLMER, *Sheriff*,
Per FRED STARK, *Dep. Sheriff.*

No. 4192. October term, A. D. 1901. Municipal court, Milwaukee county. The State of Wisconsin *v.* Albert Huegin *et al.* Capias. Docket No. 2289. Theo. Zillmer, sheriff. Filed Oct. 21, 1901. Frank E. Woller, clerk of municipal court.

47 Municipal Court, Milwaukee County.

THE STATE OF WISCONSIN, Plaintiff,
vs.
ANDREW J. AIKENS, ALBERT HUEGIN, and MELVIN A. HOYT, Defendants.

I, W. H. Bennett, district attorney for Milwaukee county, hereby inform the court that on the 5th day of April, in the year one thousand nine hundred, at the city of Milwaukee, and within said county of Milwaukee, Wisconsin, Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt did, then and there, unlawfully conspire, combine, confederate, associate, agree, mutually undertake and concert together for the purpose and with the intent then and there of wilfully and maliciously injuring The Journal Company, a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, in its trade and business and for the purpose and with the intent then and there of wilfully and maliciously injuring Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum, and each of them, in their trade, business and occupation; that the said, The Journal Company, at all of said times was, ever since has been and now is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin as aforesaid, and at all of said times was and now is the owner and publisher of a daily newspaper and advertising medium known as The Milwaukee Journal, published at the said city of Milwaukee, which said newspaper at all of the times herein referred to had, and now has, a large circulation as a newspaper and advertising medium in the city of Milwaukee and throughout the State of Wisconsin and elsewhere; that it was at all of said times, and now is, the business and trade of said The Journal Company to publish said newspaper and to sell and furnish the same to its patrons and subscribers and to solicit, receive, print and publish in said newspaper for hire advertisements for merchants and other persons as is customary with such newspapers, and that at all of said times and especially at the time

of the said combination and conspiracy, and subsequently
48 thereto, the said The Journal Company had a large number of advertisers or patrons who advertised in said newspaper, The Milwaukee Journal, and that a large proportion of the revenue of said The Journal Company was and is derived from such advertisements; that the said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum were at all of said times and now are, stockholders in said The Journal Company, and financially interested in the business and success of said The Journal Company; that the business and trade of the said Lucius W. Nieman is, among other things, that of editor of said The Milwaukee Journal, and the business and trade of said Lloyd T. Boyd is that of business manager of said The Journal Company and of said The Milwaukee Journal; and that at all of said times the business of said John W. Schaum was and is that of treasurer of said The Journal Company.

That the prices for advertisements and the advertising rates which newspapers such as said The Milwaukee Journal and the other newspapers herein mentioned are entitled to charge, and which advertisers and patrons are willing to pay, depend and are based largely upon the circulation of such papers and the number of their readers; that early in the year A. D. 1900 said The Journal Company in good faith established a new rate for advertising in said The Milwaukee Journal, based, among other things, upon its increased circulation, and notified the patrons of and advertisers in the said The Milwaukee Journal thereof, which said rate for advertising was an increase of about 25 per cent. above that which was charged by said The Journal Company for like advertising in the year 1899.

That at all of said times the said Andrew J. Aikens was and now is the business manager of The Evening Wisconsin, a daily newspaper published in the city of Milwaukee and having also an extensive circulation and devoted to the purposes of a general newspaper and to advertising for hire, like unto the said The Milwaukee Journal; that at all of said times said Albert Huegin was the business manager of The Milwaukee Sentinel, a daily newspaper published at the city of Milwaukee having an extensive circulation and devoted to the purposes of a general newspaper and to advertise for hire, like unto the newspapers aforementioned; that at all of said times said Melvin A. Hoyt was and now is the editor of The Milwaukee Daily News, and the president of the News Publishing Company, the corporation owning said The Milwaukee Daily News, a daily newspaper published at the city of Milwaukee and devoted to
49 the purposes of a general newspaper and to advertising for hire, like unto the other of said newspapers.

That on or about the 5th day of April, A. D. 1900, the exact date whereof being unknown to affiants, said Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt, with others unknown to affiant, in furtherance and in pursuance of said unlawful conspiracy, combination, confederation, association, agreement and mutual understanding, for the purpose and with the intent then and there of wilfully, maliciously and unlawfully injuring said The Journal Company in its trade and business, and also said Lucius W. Nieman, Lloyd T.

Boyd and John W. Schaum, and each of them, in their trade and business and to that end, and with the purpose and intent aforesaid, did confederate, agree and mutually undertake that if any merchant or other person or corporation advertising or proposing to advertise in said The Milwaukee Journal, should pay or agree to pay to said The Journal Company the increased rate for advertising established or fixed by it as aforesaid, that then and in that case any such person or corporation should not be permitted to advertise in any of said other three newspapers, to wit: said The Milwaukee Sentinel, The Evening Wisconsin and The Milwaukee Daily News, unless such merchant, other person or corporation should advertise in each of said three papers and pay to each of them or to the respective owners or proprietors of them a corresponding increase over the rates respectively theretofore charged by such other three newspapers respectively, to wit: about 25 per cent. in excess of what said last-mentioned three papers respectively were then charging and had theretofore charged for advertising; but that in case any merchant, other person or corporation should refuse to pay to said The Journal Company the said increased rate established by it as aforesaid for advertising in said The Milwaukee Journal, then and in that case such merchant or other person or corporation so refusing should be at liberty to advertise in any or all of the other of said three newspapers at the rates which had theretofore been charged by said other three newspapers respectively; that a large number of merchants in the city of Milwaukee and other persons were at the time of said combination and agreement, and subsequently thereto, advertising in all of said newspapers, to wit: The Milwaukee Journal, The Evening Wisconsin, The Milwaukee Sentinel, and The Milwaukee Daily News, and that the right or privilege to advertise in two or more of said papers was
50 and is considered and regarded by a large number of such merchants and other persons as a valuable right and privilege and one much to be desired; that all or the greater part of the patrons of and persons advertising in said The Milwaukee Journal were, pursuant to said combination and conspiracy on the part of said Aikens, Huegin and Hoyt, and in furtherance thereof, notified by them of the said agreement, conspiracy and combination between said Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt; that many of the patrons and advertisers in said The Milwaukee Journal were induced thereby to withdraw their advertisements therefrom, greatly to the injury of the business and trade of said The Journal Company and of said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum; that pursuant to said combination, agreement, confederation and conspiracy, and in furtherance thereof, said Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt did refuse to allow the advertisements of divers merchants and other persons to be inserted in either The Milwaukee Sentinel, The Evening Wisconsin or The Milwaukee Daily News aforesaid, and did prevent the advertisements of divers merchants and other persons from appearing in all or any of the said last three mentioned newspapers because such merchant or other persons so prevented had paid or

agreed to pay to said The Journal Company the said increased rate for advertising established by it as aforesaid; and that by reason of said combination, conspiracy and agreement many merchants in the city of Milwaukee and elsewhere, and other persons, were prevented from advertising in said The Milwaukee Journal, greatly to the injury of the business and trade of said The Journal Company and of said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum, and of each of them, contrary to the statutes in such case made and provided, and against the peace and dignity of the State of Wisconsin.

Dated at Milwaukee, in said county, this seventh day of October, in the year one thousand nine hundred and one.

W. H. BENNETT,
District Attorney, Milwaukee County, Wis.

(Endorsements:) Prisoners arraigned in open court this 21st day of October, 1901, and the said defendants Andrew J. Aikens and Albert Huegin each for himself filing a special plea in bar, and the said defendant Melvin A. Hoyt entering and filing a demurrer to the information. A. C. Brazee, municipal judge. Municipal court, Milwaukee county. State of Wisconsin against Andrew J. Aikens *et al.* Information for conspiracy. W. H. Bennett, district attorney. Filed Oct. 21, 1901. Frank E. Woller, clerk of municipal court.

51 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HUEGIN, ANDREW J. AIKENS, and MELVIN A. HOYT, Defendants.

The said Andrew J. Aikens in his own proper person cometh into court and having heard the information read, pleads thereto and says:

That he avers, confesses and admits that on the 5th day of April in the year A. D. one thousand nine hundred The Journal Company in said information named at all of said times was and ever since has been, and now is, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, and at all of said times was and now is the owner and publisher of a daily newspaper and advertising medium known as the Milwaukee Journal published at the city of Milwaukee, which said newspaper at all of the times therein referred to had and now has a large circulation as a newspaper and advertising medium in the city of Milwaukee and throughout the State of Wisconsin and elsewhere, and that it was at all of said times and now is the business and trade of said The Journal Company to publish said newspaper and to sell and furnish the same to its patrons and subscribers and to solicit and receive, print and publish in said newspaper for hire advertisements for merchants and other persons, as is customary with such newspapers, and that at all of said times and especially on the fifth day of April

A. D. one thousand nine hundred and subsequently thereto, the said The Journal Company, had a large number or advertisers or patrons who advertised in said newspaper, The Milwaukee Journal, and that a large proportion of the revenue of said The Journal Company, was and is derived from such advertisements; and that the said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum in said information named, were at all of said times and now are stockholders in said The Journal Company and financially interested in the business and success of said The Journal Company; that the business and trade of the said Lucius W. Nieman is, among other things that of editor of said The Milwaukee Journal, and the business and trade of said Loyd T. Boyd is that of business manager of said The Journal Company, and said The Milwaukee Journal, and that at all of said times the business of said John W. Schaum was and is that of treasurer of said The Journal Company.

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And further, that the prices for advertisements and the advertising rates which newspapers such as said The Milwaukee Journal and the other newspapers in said information mentioned are entitled to charge, and which advertisers and patrons are willing to pay, had been and are based largely upon the circulation of such papers and the number of their readers.

And further, that early in the year A. D. one thousand nine hundred said The Journal Company, in good faith established a new rate for advertising in said The Milwaukee Journal based among other things upon its increased circulation, and notified the patrons of and advertisers in the said The Milwaukee Journal thereof, which said rate for advertising was an increase of about twenty-five per centum above that which was charged by said The Journal Company for like advertising in the year A. D. one thousand eight hundred and ninety-nine.

And further, that at all of said times the said Andrew J. Aikens was and now is the business manager of The Evening Wisconsin, a daily newspaper published in the city of Milwaukee and having also an extensive circulation and devoted to the purposes of a general newspaper and to advertising for hire like unto the said The Milwaukee Journal; that at all of said times said Albert Huegin was the business manager of The Milwaukee Sentinel, a daily newspaper published at the city of Milwaukee, having an extensive circulation and devoted to the purposes of a general newspaper and to advertising for hire like unto the other newspapers aforementioned; and that at all of said times said Melvin A. Hoyt was and now is the editor of The Milwaukee Daily News and the president of the News Publishing Company, the corporation owning said The Milwaukee Daily News, a daily newspaper published at the city of Milwaukee and devoted to the purposes of a general newspaper and to advertising for hire like unto the other said newspapers.

And further, that on or about the fifth day of April, A. D. one thousand nine hundred, the said Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt, in furtherance and pursuance of a combination, confederation, association, agreement and

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mutual understanding for the purpose then and there and with the intent of injuring the said The Journal Company in its trade and business and also the said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum, and each of them, in their trade and business, and to that end and with such purpose and intent did confederate, agree and mutually undertake that if any merchant or other person or corporation advertising or proposing to advertise in said The Milwaukee Journal should pay or agree to pay to said The Journal Company the increased rate for advertising established or fixed by it as aforesaid, that then and in that case any such person or corporation should not be permitted to advertise in any of said other three newspapers, to wit: said The Milwaukee Sentinel, The Evening Wisconsin and The Milwaukee Daily News, unless such merchant, other person or corporation should advertise in each of said three papers and pay to each of them, or to the respective owners or proprietors of them, a corresponding increase over the rates respectively theretofore charged by such other three newspapers respectively, to wit: about twenty-five percentum in excess of what said last-mentioned three papers respectively were then charging and had theretofore charged for advertising, but that in case any merchant, other person or corporation should refuse to pay to the said The Journal Company the said increased rate established by it as aforesaid for advertising in said The Milwaukee Journal, then and in that case such merchant or other person or corporation so refusing should be at liberty to advertise in any or all of the other of said three newspapers at the rates which had theretofore been charged by said other three newspapers respectively.

And further, that a large number of merchants in the city of Milwaukee, and other persons, were at the time of said combination and agreement and subsequently thereto advertising in all of said newspapers, to wit: The Milwaukee Journal, The Evening Wisconsin, The Milwaukee Sentinel and The Milwaukee Daily News, and that the right or privilege to advertise in two or more of said papers was and is considered by a large number of such merchants and other persons as a valuable right and privilege and one much to be desired.

And further, that all or the greater part of the patrons of and persons advertising in said The Milwaukee Journal were, pursuant to said combination and confederacy on the part of said Albert Huegin, Andrew J. Aikens and Melvin A. Hoyt, and in furtherance thereof notified by them of the said agreement and combination between the said Aikens, Hoyt and Huegin that many of the patrons and advertisers in said The Milwaukee Journal were induced thereby to withdraw their advertisements therefrom, greatly to the injury of the business and trade of said The Journal Company and of said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum, and that pursuant to said combination, agreement and confederation and in furtherance thereof the said Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt had refused to allow the advertisements of divers merchants and other persons to be inserted in either The Milwaukee Sentinel, The Evening Wisconsin or The

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Milwaukee Daily News aforesaid, and did prevent the advertisements of divers merchants and other persons from appearing in any or all of said last three mentioned newspapers because such merchant- or other persons so prevented had paid or agreed to pay the said The Journal Company, the said increased rate for advertising established by it as aforesaid, and that by reason of said combination and agreement many merchants in the city of Milwaukee and elsewhere and other persons were prevented from advertising in said The Milwaukee Journal greatly to the injury of the business and trade of said The Journal Company and of the said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum, and each of them; and that the hereinbefore mentioned acts, intentions and agreements and combinations were done, harbored, made and entered into in trade competition, and that such hereinbefore mentioned acts, intentions, agreements and combinations, and none other, constitute the alleged unlawful conspiracy in said information mentioned.

And this defendant submits to this honorable court that notwithstanding the foregoing the State of Wisconsin ought not further to prosecute the information against him because for more than twenty years last past and at all times in said information mentioned he was and he now is, and he at all said times has been, a lawful citizen of the United States and of the State of Wisconsin, and that each of his said codefendants, the said Albert Huegin and Melvin A. Hoyt, was, during all said times last mentioned and now is, a lawful citizen of the United States and of the State of Wisconsin, and that during all the times in said information mentioned and for many years prior to said time this defendant and each of
55 his said codefendants was engaged at the city of Milwaukee, in the county of Milwaukee, in the State of Wisconsin, in his business, trade or calling of managing the business departments respectively of the newspapers mentioned in said information other than The Milwaukee Journal and in procuring and securing advertising patronage and custom for said newspapers last mentioned in lawful trade or business competition with said The Milwaukee Journal, and that therefore this defendant and his said codefendants at all times in said information mentioned had and enjoyed the right, privilege and immunity as free men and as such citizens of the United States and of the State of Wisconsin and as such competitors in business, any statute of the State of Wisconsin or judicial decision of the courts of the State of Wisconsin to the contrary notwithstanding, under article 14 of the Constitution of the United States to combine, associate, confederate and agree together for the purpose of injuring the said The Journal Company or any stockholder thereof in its said The Journal Company's trade and business by doing the things and making the agreements in said information set out and herein confessed and admitted.

Wherefore, the said Andrew J. Aikens prays judgment on the said information that it be quashed and held for naught and he go hence without day, and will ever pray, etc..

ANDREW J. AIKENS.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

Andrew J. Aikens being duly sworn, says he has signed the foregoing plea and knows its contents and that the same is true.

ANDREW J. AIKENS.

Subscribed and sworn to before me, October 21, A. D. 1901.

EDWARD A. CONWAY,
Notary Public, Milwaukee County, Wisconsin.

My commission expires Jan. 1, 1905.

I certify that in my opinion the foregoing plea is good and sufficient in law.

W. H. TIMLIN,
Attorney and Counsellor at Law.

(Endorsements:) Municipal court, Milwaukee county. State of Wisconsin *v.* A. J. Aikens *et al.* A. J. Aikens. Filed Oct. 21, 1901. Frank E. Woller, clerk of municipal court.

56 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HUEGIN, ANDREW J. AIKENS, and MELVIN A. HOYT, Defendants.

The judge of the above-mentioned court having been at the time of instituting of the prosecution of the above-entitled cause district attorney of Milwaukee county, and having been consulted in regard to the same, and having been attorney for the prosecution in said cause, and the judge of this court having for said reasons called upon the Hon. George W. Burnell, circuit judge of the third judicial circuit, to attend and hold court during the trial of said cause, and the said circuit judge, the Hon. George W. Burnell, having consented to attend and hold court during the trial of this cause, and having set Wednesday, November 20th, 1901, at ten o'clock a. m., as the date and time when he would so attend and hold court for the trial of said cause, it is hereby

Ordered, that this cause be, and the same hereby is, set for trial in this court before the said circuit judge, the Hon. George W. Burnell, on the 20th day of November, 1901, at ten o'clock, a. m. of said day, and it is hereby further

Ordered, that the clerk of this court shall, in writing notify the parties in this cause and their respective attorneys of the time and place set for the hearing of said cause, and of the judge who will preside therein.

By the court,

A. C. BRAZEE, *Judge.*

Milwaukee, November 11th, 1901.

(Endorsements:) Municipal court, Milwaukee county. State of Wisconsin *vs.* Albert Huegin *et al.* Order setting case for trial. Filed Nov. 11, 1901. Frank E. Woller, clerk of municipal court.

57 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HUEGIN, ANDREW J. AIKENS, and MELVIN A. HOYT, Defendants.

To Albert Huegin and Van Dyke, Van Dyke & Carter, his attorneys; to Andrew J. Aikens and Timlin, Glicksman & Conway, his attorneys, and to Melvin A. Hoyt and N. S. Murphy, his attorney:

Please take notice, that Hon. George W. Burnell, circuit judge of the third judicial circuit, who was heretofore called by Hon. A. C. Brazee, judge of the municipal court, has consented to attend and hold court during the trial of the above cause; and you, and each of you, are hereby notified that the above cause has been set for trial before said circuit judge, the Hon. George W. Burnell, Wednesday, November 20, 1901, at ten o'clock a. m. of said day, at the municipal court room, in the city hall of the city of Milwaukee, county of Milwaukee, Wisconsin.

By order of the court.

FRANK E. WOLLER,
Clerk of the Municipal Court.

Dated this 11th day of November, 1901.

(Endorsements.)

STATE OF WISCONSIN, } ss:
Milwaukee County, }

I hereby certify that at the city of Milwaukee, in said county, on the 12th day of November, 1901, I served the within notice on the within-named Albert Huegin, one of the defendants, on Van Dyke, Van Dyke & Carter, his attorneys; on Andrew J. Aikens, one of the defendants, on Timlin, Glicksman & Conway, his attorneys; and on Melvin A Hoyt, one of the defendants; and on N. S. Murphy, his attorney, personally, by delivering to and leaving with each of them a true copy thereof.

I further certify that at the time of said service I endorsed the date of service, my name and official title on each copy so served.

THEODORE ZILLMER, *Sheriff.*
Per Z. CLAYTON, *Deputy.*

Service	$1.50
Copies	.10
Travel	.20
Ret	.25
	$2.05

Municipal court, Milwaukee county. State of Wisconsin v. Albert Hoegin et al. Notice of time of hearing. Filed Nov. 16, 1903. Frank E. Waller, clerk of municipal court. Docket No. 2499. Theodore Zillmer, sheriff.

98 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HOEGIN, ANDREW J. AIKENS, and MELVIN A. HUTT, Defendants.

To Andrew J. Aikens and to Timlin, Glicksman & Conway, his attorneys:

Please take notice, that upon the application hereto annexed, a copy of which is herewith served upon you, and on all the pleadings heretofore filed and served in the above-entitled matter, the State of Wisconsin, by W. H. Bennett, district attorney for Milwaukee county, who prosecutes for the State in the above-entitled matter, will move the court on the 28th day of November, 1903, at the opening of court on that day, or as soon as counsel can be heard, to strike out the special plea in bar filed by the said defendant, Andrew J. Aikens, herein, on the 21st day of October, 1903, for the reasons set forth in the annexed petition.

W. H. BENNETT,
District Attorney in and for Milwaukee County, Wisconsin.

Dated this 14th day of November, A. D. 1903.

99 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HOEGIN, ANDREW J. AIKENS, and MELVIN A. HUTT, Defendants.

And now comes the plaintiff, The State of Wisconsin, by W. H. Bennett, district attorney for Milwaukee county, who prosecutes for the said State in this behalf, and says, that the information herein and all matters therein contained in manner and form are sufficient in law to compel the said defendant, Andrew J. Aikens, to answer the same.

And further says, as to the plea filed October 21, 1903, in the above-entitled matter by Andrew J. Aikens, one of the defendants, that the same and all matters therein contained in manner and form as the same are pleaded and set forth, are not sufficient in law to bar or preclude the said State from prosecuting the said information against him, the said Andrew J. Aikens, and that the said State is not bound by the law of the land to answer the same.

Wherefore, for want of sufficient plea in this behalf on the part of said defendant, Andrew J. Aikens, The State of Wisconsin, the

plaintiff herein, prays, that the said plea of the said Andrew J. Aikens be stricken out and that the said defendant, Andrew J. Aikens, be directed and required to plead to the said information in the manner and form provided by law.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

W. H. Bennett, being first duly sworn, on oath, deposes and says, that he is the district attorney in and for the county of Milwaukee; that he has heard read the foregoing petition and knows the
60 contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

W. H. BENNETT.

Subscribed and sworn to before me this 14th day of November, A. D. 1901.

F. J. KNOELL,
Notary Public, Milwaukee County, Wisconsin.

(Endorsements:) Municipal court, Milwaukee county. State of Wisconsin *v.* Albert Huegin *et al.* W. H. Bennett, district attorney. Docket No. 2518. Theodore Zillmer, sheriff. Filed Nov. 20, 1901. Frank E. Woller, clerk of municipal court.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

I hereby certify that at the city of Milwaukee, in said county, on the 15th day of November, 1901, I served the within notice and affidavit annexed on the within-named Andrew J. Aikens, personally, by delivering to and leaving with him a true copy thereof.

I further certify, that at the time of said service I endorsed the date of service, my name and official title on the copy so served.

THEODORE ZILLMER, *Sheriff,*
Per Z. CLAYTON, *Deputy.*

Service	$1.00
Copies	.80
Travel	.20
Ret.	.25
	$2.25

61 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HUEGIN, ANDREW J. AIKENS, and MELVIN A. HOYT, Defendants.

To Andrew J. Aikens and to Timlin, Glicksman & Conway, his attorneys:

Please take notice, that upon the application hereto annexed, a copy of which is herewith served upon you, and on all the pleadings heretofore filed and served in the above-entitled matter, the State of Wisconsin, by W. H. Bennett, district attorney for Milwaukee county, who prosecutes for the State in the above-entitled matter, will move the court on the 20th day of November, 1901, at the opening of court on that day, or as soon as counsel can be heard, to strike out the special plea in bar filed by the said defendant, Andrew J. Aikens, herein, on the 21st day of October, 1901, for the reasons set forth in the annexed petition.

W. H. BENNETT,
District Attorney in and for Milwaukee County, Wisconsin.

Dated this 14th day of November, A. D. 1901.

(Endorsements.)

STATE OF WISCONSIN, } *ss:*
Milwaukee County, }

I hereby certify that at the city of Milwaukee, in said county, on the 15th day of November, 1901, I served the within notice and affidavit annexed on the within-named Timlin, Glicksman & Conway personally by delivering to and leaving with them a true copy thereof.

I further certify that at the time of said service I endorsed the date thereon, my name and official title on the copy so served.

THEODORE ZILLMER, *Sheriff,*
By Z. CLAYTON, *Deputy.*

Service	1.00
Copies	.80
Travel	.20
Ret	.25
	$2.25

62 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HUEGIN, ANDREW J. AIKENS, and MELVIN A. HOYT, Defendants.

And now comes the plaintiff, The State of Wisconsin, by W. H. Bennett, district attorney for Milwaukee county, who prosecutes for the said State in this behalf, and says, that the information herein and all matters therein contained in manner and form are sufficient in law to compel the said defendant, Andrew J. Aikens, to answer the same.

And further says, as to the plea filed October 21, 1901, in the above-entitled matter by Andrew J. Aikens, one of the defendants, that the same and all matters therein contained in manner and form as the same are pleaded and set forth, are not sufficient in law to bar or preclude the said State from prosecuting the said information against him, the said Andrew J. Aikens, and that the said State is not bound by the law of the land to answer the same.

Wherefore, for want of sufficient plea in this behalf on the part of said defendant, Andrew J. Aikens, The State of Wisconsin, the plaintiff herein, prays, that the said plea of the said Andrew J. Aikens be stricken out and that the said defendant, Andrew J. Aikens, be directed and required to plead to the said information in the manner and form provided by law.

STATE OF WISCONSIN, } *ss:*
Milwaukee County, }

W. H. Bennett, being first duly sworn on oath, deposes and says, that he is the district attorney in and for the county of Milwaukee; that he has heard read the foregoing petition and knows the
63 contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

W. H. BENNETT.

Subscribed and sworn to before me, this 14th day of November, A. D. 1901.

F. J. KNOELL,
Notary Public, Milwaukee County, Wisconsin.

(Endorsements:) Municipal court, Milwaukee county. State of Wisconsin *vs.* Albert Huegin *et al.* Docket No. 2521. Theodore Zillmer, sheriff. Filed Nov. 20, 1901. Frank E. Woller, clerk of municipal court. W. H. Bennett, district attorney.

64 In Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ANDREW J. AIKENS ET AL., Defendants.

This case coming on on November 20th, A. D. 1901, at the then current term of said court, Hon. George W. Burnell, judge presiding, he having been called in by Judge A. C. Brazee, who had heretofore acted for the State in this matter; and the defendant, Andrew J. Aikens, having filed and served a special plea in bar, and the district attorney having demurred to said plea, and the court having sustained said demurrer, to which ruling the said Andrew J. Aikens then and there duly excepted, said exception is hereby allowed and signed, and the said Andrew J. Aikens thereupon declared in open court that he stood upon said plea, and the court thereupon found Andrew J. Aikens guilty as charged in the information, and sentenced him to pay a fine of 150 dollars, together with 67 10/100 dollars, one-third of the costs of prosecution, and that in default of the payment of such fine and costs the said Andrew J. Aikens be committed to the House of Correction for Milwaukee county until such fine and costs are paid, not to exceed 30 days, to which judgment the said Andrew J. Aikens duly excepted, and the exception is hereby allowed and signed. And thereupon, the said Andrew J. Aikens asked for a stay of proceedings until the return of and filing of the remittitur finally in this cause in this court, for the purpose of enabling him to review said judgment by writ of error under and pursuant to sections 4720 and 4722 of the Revised Statutes, which stay of proceedings is hereby granted, provided that the said Andrew J. Aikens recognize to the State of Wisconsin in the sum of five hundred dollars, with sufficient sureties for his personal ap-
65 pearance at the supreme court at the next term thereof, to then enter and prosecute his said exceptions with effect, and abide the sentence thereon, and in the meantime keep the peace and be of good behavior. Recognizance offered and filed and sureties approved.

Dated this 20th day of November, A. D. 1901.

By the court,

GEORGE W. BURNELL,
Judge, Presiding.

(Endorsements): Municipal court, Milwaukee county. State of Wisconsin *v.* Andrew J. Aikens *et al.* Exceptions. W. H. Timlin, attorney for Andrew J. Aikens. Filed Nov. 20, 1901. Frank E. Woller, clerk of municipal court.

66 STATE OF WISCONSIN, } ss:
Milwaukee County, }

In the Municipal Court of the County of Milwaukee.

We, Andrew J. Aikens, and Herman Bleyer and F. M. Harbach, of the county of Milwaukee, acknowledge ourselves to be indebted

to the State of Wisconsin in the sum of $500.00 *dollars*, to be made and levied of our several goods and chattels, lands and tenements, if default be made in the following condition, to wit:

The condition of this recognizance is such that, whereas, the said Andrew J. Aikens was, on the 20th day of November. A. D. 1901, convicted before the municipal court of the county of Milwaukee, of the offense of conspiracy to injure and sentenced to pay a fine of 150.00 dollars, and costs taxed at $67\frac{1}{100}$ dollars, and to be committed to the House of Correction of said county, until such fine and costs are paid or discharged, such imprisonment not to exceed 30 days; and whereas, the said Andrew J. Aikens has presented exceptions under section 7220 R. S. which were allowed, preparatory to suing out a writ of error from the judgment of said municipal court rendered thereon, to the supreme court of the State of Wisconsin; now, therefore, if the said Andrew J. Aikens shall personally appear in the supreme court of the State of Wisconsin on the first day of the next regular term of said court, and from time to time thereafter until discharged by law, and to enter and there prosecute his exceptions with effect, and abide the sentence of the court thereon, and in the meantime keep the peace and be of good behavior, then this recognizance to be void, otherwise of force.

Dated, Milwaukee, this 20th day of November, 1901.

A. J. AIKENS.
HERMAN BLEYER.
FRANK M. HARBACH.

67 (Endorsements:) State of Wisconsin, Milwaukee county. Municipal court, county of Milwaukee. The State of Wisconsin against A. J. Aikens. Recognizance for appeal. Approved as to form and sufficiency of sureties, this 20th day of November, 1901. Geo. W. Burnell, judge. Filed Nov. 20, 1901. Frank E. Woller, clerk of municipal court.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

Andrew J. Aikens, and Herman Bleyer and F. M. Harbach, the sureties above named, being severally duly sworn, each for himself on oath, says that he owns and possesses unincumbered real estate, within the State, not exempt from sale on execution, worth at least the sum of one thousand dollars.

A. J. AIKENS.
HERMAN BLEYER.
FRANK M. HARBACH.

Subscribed and sworn to before me, this 20th day of November, A. D. 1901.

THOS. V. DALLY,
Deputy Clerk of the Municipal Court.

Approved Nov. 20th, 1901.

FRANK E. WOLLER,
Clerk of the Municipal Court.

68 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ANDREW J. AIKENS ET AL., Defendants.

At a regular term of said court current on November 20, A. D. 1901, Honorable George W. Burnell, judge presiding, who having been called in by Judge A. C. Brazee for the reason that the latter was disqualified having heretofore acted for the State in this matter, the State of Wisconsin appeared by W. H. Bennett, district attorney of Milwaukee county, and the accused defendant aforesaid, Andrew J. Aikens, appeared by W. H. Timlin, his attorney, and the following proceedings were had: said district attorney in behalf of the State presented his motion to strike out the special plea in bar interposed by the said defendant Andrew J. Aikens, and after hearing the said district attorney for said motion and the said W. H. Timlin, opposed, said motion was denied; whereupon the said district attorney asked that his motion papers might stand and be considered as a demurrer to such special plea in bar and the accused defendant consenting thereunto it was so ordered. Whereupon after hearing the said district attorney in behalf of the State and the said W. H Timlin in behalf of the accused defendant Andrew J. Aikens, the court ordered that said demurrer of the State to said special plea in bar be and the same was sustained, to which ruling the said accused defendant Andrew J. Aikens then and there duly excepted, which exception was reduced to writing and then and there allowed, whereupon the said accused defendant Andrew J. Aikens declared that he stood upon said plea and did not desire to plead over. The court then found the said accused defendant guilty as charged in the information and sentenced him to pay a fine of one hundred and fifty dollars together with sixty-seven and $\frac{10}{100}$ (67.10) dollars costs, being one-third of the whole cost of this proceeding, and in default of such payment be committed to the House of Correction for Milwaukee county until such fine and costs are paid, not, however, in all exceeding thirty days. Whereupon the said accused defendant Andrew J. Aikens then and there duly tendered his exception to said finding and judgment of conviction, which exception was reduced to writing and allowed, and in order that said proceedings had may more certainly appear of record in this cause the foregoing is by consent of both parties this day signed, sealed and certified by me as and for a bill of exceptions on the part of the said accused defendant Andrew J. Aikens in the cause aforesaid.

Dated November 25, A. D. 1901.

GEO. W. BURNELL,
Judge Presiding.

(Endorsements:) Municipal court, Milwaukee county. The State of Wisconsin, plaintiff, *v.* Andrew J. Aikens, defendant. Bill of exceptions. W. H. Timlin, 105 Grand Av., Milwaukee, defendant's attorney. Due service admitted this 25th day of November, 1901.

W. H. Bennett, dist. att'y. and attorney for plaintiff, State of Wisconsin. Filed Nov. 26, 1901. Frank E. Woller, clerk of municipal court.

69 In Municipal Court, Milwaukee County.

THE STATE OF WISCONSIN, Plaintiff,
vs.
ANDREW J. AIKENS, ALBERT HUEGIN, and MELVIN A. HOYT, Defendants.

To W. H. Bennett, Esq., district attorney:

You will please take notice that Andrew J. Aikens, one of the defendants in the above-entitled action has this day filed with the clerk of the above-named court a writ of error from the supreme court of the State of Wisconsin in the above-entitled action, and a full, true and complete copy of said writ of error is hereto attached.

Dated Milwaukee, November 26th, 1901.

Yours, etc.,
W. H. TIMLIN,
Attorney for A. J. Aikens, Defendant.

70 STATE OF WISCONSIN, *Supreme Court,* } *ss:*

The State of Wisconsin to the judge of the municipal court of the county of Milwaukee, in said State, Greeting:

Because, in the record and proceedings, and also in the rendition of judgment, in a suit which was duly tried in the municipal court of Milwaukee county aforesaid, before you, between The State of Wisconsin plaintiff, and Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt, defendants, in a criminal prosecution for misdemeanor manifest error hath intervened to the great damage of the said Andrew J. Aikens, as by his complaint we are informed.

And we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid, do command you, that if judgment be thereupon given, then you send to the judges of the supreme court of the State of Wisconsin, distinctly and openly, under your seal, with all convenient dispatch, a transcript of the record and proceedings of the suit aforesaid, with all things concerning the same and this writ, so that they may have the same at the next term of our said supreme court, to be held at Madison, in the State aforesaid, on the Tuesday next preceding the second Wednesday in January anno Domini one thousand nine hundred and two that the record and proceedings aforesaid being inspected, we may cause to be further done, for correcting that error, what of right, and according to law and the rules of our said court, ought to be done.

Witness, the Hon. John B. Cassoday, chief justice of the
[SEAL.] supreme court of the State of Wisconsin, at Madison, this twenty-sixth day of November, A. D. 1901.

Attest: CLARENCE KELLOGG, *Clerk.*

71 Municipal court, Milwaukee county. State of Wisconsin, plaintiff *v.* Andrew J. Aikens *et al.*, defendants. Notice of filing writ of error. W. H. Timlin, 105 Grand Av., Milwaukee, A. J. Aikens' attorney. Due service admitted this 26th day of November, 1901. W. H. Bennett, dist. att'y & attorney for plaintiff. Filed Nov. 26, 1901. Frank E. Woller, clerk of municipal court.

72 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HUEGIN, ANDREW J. AIKENS, and MELVIN A. HOYT, Defendants.

The said Albert Huegin in his own proper person cometh into court, and having heard the information read, pleads thereunto and says:

That he avers, confesses and admits that on the 5th day of April in the year A. D. one thousand nine hundred The Journal Company in said information named at all of said times was and ever since has been, and now is, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, and at all of said times was and now is the owner and publisher of a daily newspaper and advertising medium known as The Milwaukee Journal published at the city of Milwaukee, which said newspaper at all of the times therein referred to had and now has a large circulation as a newspaper and advertising medium in the city of Milwaukee and throughout the State of Wisconsin and elsewhere, and that it was at all of said times and now is the business and trade of said The Journal Company to publish said newspaper and to sell and furnish the same to its patrons and subscribers and to solicit and receive, print and publish in said newspaper for hire advertisements for merchants and other persons, as is customary with such newspapers, and that at all of said times and especially on the fifth day of April A. D. one thousand nine hundred and subsequently thereto, the said The Journal Company, had a large number of advertisers or patrons who advertised in said newspaper, The Milwaukee Journal,

73 and that a large proportion of the revenue of said The Journal Company, was and is derived from such advertisements; and that the said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum in said information named, were at all of said times and now are stockholders in said The Journal Company and financially interested in the business and success of said The Journal Company; that the business and trade of the said Lucius W. Nieman is among other things that of editor of said The Milwaukee Journal, and the business and trade of said Lloyd T. Boyd is that of business manager of said The Journal Company, and said The Milwaukee Journal, and that at all of said times the business of said John W. Schaum was and is that of treasurer of said The Journal Company.

And further, that the price for advertisements and the advertising

rates which newspapers such as said The Milwaukee Journal and the other newspapers in said information mentioned are entitled to charge, and which advertisers and patrons are willing to pay, had been and are based largely upon the circulation of such papers and the number of their readers.

And further, that early in the year A. D. one thousand nine hundred said The Journal Company, in good faith established a new rate for advertising in said The Milwaukee Journal based among other things upon its increased circulation, and notified the patrons of and advertisers in the said The Milwaukee Journal thereof, which said rate for advertising was an increase of about twenty-five per centum above that which was charged by said The Journal Company for like advertising in the year A. D. one thousand eight hundred and ninety-nine.

And further, that at all of said times the said Andrew J. Aikens was and now is the business manager of The Evening Wisconsin, a daily newspaper published in the city of Milwaukee and having also an extensive circulation and devoted to the purposes of
74 a general newspaper and to advertising for hire like unto the said The Milwaukee Journal; that at all of said times said Albert Huegin was the business manager of The Milwaukee Sentinel, a daily newspaper published at the city of Milwaukee, having an extensive circulation and devoted to the purposes of a general newspaper and to advertising for hire like unto the other newspapers aforementioned; and that at all of said times said Melvin A. Hoyt was and now is the editor of The Milwaukee Daily News and the president of the News Publishing Company, the corporation owning said The Milwaukee Daily News, a daily newspaper published at the city of Milwaukee and devoted to the purposes of a general newspaper and to advertising for hire like unto the other of said newspapers.

And further, that on or about the fifth day of April, A. D. one thousand nine hundred, the said Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt, in furtherance and pursuance of a combination, confederation, association, agreement and mutual understanding for the purpose then and there and with the intent of injuring the said The Journal Company in its trade and business and also the said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum, and each of them, in their trade and business, and to that end and with such purpose and intent did confederate, agree and mutually undertake that if any merchant or other person or corporation advertising or proposing to advertise in said The Milwaukee Journal should pay or agree to pay to said The Journal Company the increased rate for advertising established or fixed by it as aforesaid, that then and in that case any such person or corporation should not be permitted to advertise in any of said other three newspapers, to wit, said The Milwaukee Sentinel, The Evening Wisconsin and The Milwaukee Daily News, unless such merchant, other person or corporation should advertise in each of said three papers and pay to each of them, or to the respective owners or proprietors of
75 them, a corresponding increase over the rates respectively theretofore charged by such other three newspapers respectively,

to wit, about twenty-five per centum in excess of what said last-mentioned three papers respectively were then charging and had theretofore charged for advertising, but that in case any merchant, other person or corporation should refuse to pay to the said The Journal Company the said increased rate established by it as aforesaid for advertising in said The Milwaukee Journal then and in that case such merchant or other person or corporation so refusing should be at liberty to advertise in any or all of the other of said three newspapers at the rates which had theretofore been charged by said other three newspapers respectively.

And further, that a large number of merchants in the city of Milwaukee, and other persons, were at the time of such combination and agreement and subsequently thereto advertising in all of said newspapers, to wit: The Milwaukee Journal, The Evening Wisconsin, The Milwaukee Sentinel and The Milwaukee Daily News, and that the right or privilege to advertise in two or more of said papers was and is considered by a large number of such merchants and other persons as a valuable right and privilege and one much to be desired.

And further, that all or the greater part of the patrons of and persons advertising in said The Milwaukee Journal were pursuant to said combination and confederacy on the part of said Albert Huegin, Andrew J. Aikens and Melvin A. Hoyt and in furtherance thereof notified by them of the said agreement and combination between the said Aikens, Hoyt and Huegin that many of the patrons and advertisers in said The Milwaukee Journal were induced thereby to withdraw their advertisements therefrom, greatly to the injury of the business and trade of said The Journal Company and of said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum, and that pursuant to said combination, agreement and confederation and in furtherance thereof
76 the said Andrew J. Aikens, Albert Huegin and Melvin A. Hoyt had refused to allow the advertisements of divers merchants and other persons to be inserted in either The Milwaukee Sentinel, The Evening Wisconsin or The Milwaukee Daily News aforesaid, and did prevent the advertisements of divers merchants and other persons from appearing in any or all of said last three mentioned newspapers because such merchant-, or other persons so prevented had paid or agreed to pay to said The Journal Company, the said increased rate for advertising established by it as aforesaid, and that by reason of said combination and agreement many merchants in the city of Milwaukee and elsewhere and other persons were prevented from advertising in said The Milwaukee Journal greatly to the injury of the business and trade of said The Journal Company and of the said Lucius W. Nieman, Lloyd T. Boyd and John W. Schaum, and each of them; and that the hereinbefore-mentioned acts, intentions, and agreements and combinations were done, harbored, made and entered into in trade competition, and that such hereinbefore-mentioned acts, intentions, agreements and combinations, and none other, constitute the alleged unlawful conspiracy in said information mentioned.

And this defendant submits to this honorable court that notwithstanding the foregoing the State of Wisconsin ought not further to prosecute the information against him because for more than twenty years last past and at all times in said information mentioned he was and he now is, and he at all said times has been, a lawful citizen of the United States and of the State of Wisconsin, and that each of his said codefendants the said Andrew J. Aikens and Melvin A. Hoyt was during all said times last mentioned and now is a lawful citizen of the United States and of the State of Wisconsin, and that during all the times in said information mentioned and for many years prior to said time this defendant and each of his said codefendants was
77 engaged at the city of Milwaukee in the county of Milwaukee in the State of Wisconsin in his business, trade or calling of managing the business departments respectively of the newspapers mentioned in said information other than The Milwaukee Journal and in procuring and securing advertising patronage and custom for said newspapers last mentioned in lawful trade or business competition with said The Milwaukee Journal, and that therefore this defendant and his said codefendants at all times in said information mentioned had and enjoyed the right, privilege and immunity as free men and as such citizens of the United States and of the State of Wisconsin and as such competitors in business, any statute of the State of Wisconsin or judicial decision of the courts of the State of Wisconsin to the contrary notwithstanding, under article 14 of the Constitution of the United States to combine, associate, confederate and agree together for the purpose of injuring the said The Journal Company, or any stockholder thereof, in its said The Journal Company's trade and business by doing the things and making the agreements in said information set out and herein confessed and admitted.

Wherefore the said Albert Huegin prays judgment on the said information that it be quashed and held for naught and he go hence without day, and will ever pray, &c.

ALBERT HUEGIN.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

Albert Huegin, being duly sworn, says he has signed the foregoing plea and knows its contents and that the same is true.

ALBERT HUEGIN.

Subscribed and sworn to before me, October 21st, A. D. 1901.

EDWARD A. CONWAY,
Notary Public, Milwaukee County, Wisconsin.

My commission expires Jan. 1st, 1905.

I certify that in my opinion the foregoing plea is good and sufficient in law.

GEO. D. VAN DYKE,
Attorney and Counselor at Law.

78 (Endorsements:) Municipal court, Milwaukee county. State of Wisconsin *v.* A. Huegin *et al.* A. Huegin. Filed Oct. 21, 1901. Frank E. Woller, clerk of municipal court.

79 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HUEGIN, ANDREW J. AIKENS, and MELVIN A. HOYT, Defendants.

To Albert Huegin and to Van Dyke, Van Dyke & Carter, his attorneys:

Please take notice, that upon the application hereto annexed, a copy of which is herewith served upon you, and on all the pleadings heretofore filed and served in the above-entitled matter, the State of Wisconsin, by W. H. Bennett, district attorney for Milwaukee county, who prosecutes for the State in the above-entitled matter, will move the court on the 20th day of November, 1901, at the opening of court on that day, or as soon thereafter as counsel can be heard, to strike out the special plea in bar filed by said defendant, Albert Huegin, herein, on the 21st day of October, 1901, for the reasons set forth in the annexed petition.

W. H. BENNETT,
District Attorney in and for Milwaukee County, Wis.

Dated this 14th day of November, A. D. 1901.

80 (Endorsements.)

STATE OF WISCONSIN, } *ss:*
Milwaukee County, }

I hereby certify that at the city of Milwaukee, in said county, on the 15th day of November, 1901, I served the within notice and affidavit annexed on the within-named Albert Huegin, personally, by delivering to and leaving with him a true copy thereof.

I further certify that at the time of said service I endorsed the date of service, my name, and official title on the copy so served.

THEODORE ZILLMER, *Sheriff,*
Per Z. CLAYTON, *Deputy.*

Service	$1.00
Copies	.80
Travel	.20
Ret	.25
	$2.25

81 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HUGGIN, ANDREW J. AIKENS, and MELVIN A. HUNT, Defendants.

And now comes the plaintiff The State of Wisconsin, by W. H. Bennett, district attorney for Milwaukee county, who prosecutes for the said State in this behalf, and says, that the information herein and all matters therein contained in manner and form are sufficient in law to compel the said defendant, Albert Huggin, to answer to same.

And further says, as to the plea filed October 21, 1901, in the above-entitled matter, by Albert Huggin, one of the defendants, for the same and all matters therein contained in manner and form as the same are pleaded and set forth, are not sufficient in law to bar or preclude the said State from prosecuting the said information against him, the said Albert Huggin, and that the said State is not bound by the law of the land to answer the same.

Wherefore, for want of a sufficient plea in this behalf on the part of said defendant, Albert Huggin, The State of Wisconsin, the plaintiff herein, prays that the said plea of the said Albert Huggin is stricken out and that the said defendant, Albert Huggin, be directed and required to plead to the said information in the manner and form provided by law.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

W. H. Bennett, being first duly sworn on oath, deposes and says that he is the district attorney in and for the county of Milwaukee; that he has heard read the foregoing petition and knows its
82 contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

W. H. BENNETT.

Subscribed and sworn to before me, this 16th day of November, A. D. 1901.

F. J. KNOELL,
Notary Public, Milwaukee County, Wisconsin.

(Endorsements:) Municipal court, Milwaukee county. State of Wisconsin *v.* Albert Huggin *et al.* W. H. Bennett, district attorney. Docket No. 2519. Theodore Zillmer, sheriff. Filed Nov. 20, 1901. Frank E. Woller, clerk of municipal court.

60 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HUEGIN, ANDREW J. ROGERS, and MICHAEL A. ROSE, Defendants.

To Albert Huegin and to Van Dyke, Van Dyke & Carter, his attorneys:

Please take notice, that upon the application herein annexed, a copy of which is herewith served upon you, and on all the pleadings heretofore filed and served in the above-entitled matter, the State of Wisconsin, by W. H. Bennett, district attorney for Milwaukee county, who prosecutes for the State in the above-entitled matter, will move the court on the 20th day of November, 1901, at the opening of court on that day, or as soon thereafter as counsel can be heard, to strike out the special plea in bar filed by said defendant, Albert Huegin, herein, on the 21st day of October, 1901, for the reasons set forth in the annexed petition.

W. H. BENNETT,
District Attorney in and for Milwaukee County, Wis.

Dated this 16th day of November, A. D. 1901.

61 Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
ALBERT HUEGIN, ANDREW J. ROGERS, and MICHAEL A. ROSE, Defendants.

And now comes the plaintiff The State of Wisconsin, by W. H. Bennett, district attorney for Milwaukee county, who prosecutes for the said State in this behalf, and says that the information herein and all matters therein contained in manner and form are sufficient in law to compel the said defendant, Albert Huegin, to answer the same.

And further says, as to the plea filed October 21, 1901, in the above-entitled matter, by Albert Huegin, one of the defendants, that the same and all matters therein contained in manner and form as the same are pleaded and set forth, are not sufficient in law to bar or preclude the said State from prosecuting the said information against him, the said Albert Huegin, and that the said State is not bound by the law of the land to answer the same.

Wherefore, for want of a sufficient plea in his behalf on the part of said defendant, Albert Huegin, The State of Wisconsin, the plaintiff herein, prays that the said plea of the said Albert Huegin be stricken out and that the said defendant, Albert Huegin, be directed and required to plead to the said information in the manner and form provided by law.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

W. H. Bennett, being first duly sworn on oath, deposes and says, that he is the district attorney in and for the county of Milwaukee; that he has heard read the foregoing petition and knows the
85 contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

W. H. BENNETT.

Subscribed and sworn to before me, this 14th day of November, A. D. 1901.

F. J. KNOELL,
Notary Public, Milwaukee County, Wisconsin.

(Endorsements.)

STATE OF WISCONSIN, } ss:
Milwaukee County, }

I hereby certify that at the city of Milwaukee, in said county, on the 15th day of November, 1901, I served the within notice and affidavit annexed on the within-named Van Dyke, Van Dyke & Carter, personally, by delivering to and leaving with them a true copy thereof.

I further certify that at the time of said service I endorsed the date of service, my name and official title on the copy so served.

THEODORE ZILLMER, *Sheriff,*
Per Z. CLAYTON, *Deputy.*

Service	$1.00
Copies	.80
Travel	.20
Ret	.25
	$2.25

Municipal court, Milwaukee county. State of Wisconsin *v.* Albert Huegin *et al.* W. H. Bennett, district attorney. Docket No. 2520. Theodore Zillmer, sheriff. Filed Nov. 20, 1901. Frank E. Woller, clerk of municipal court.

86 In Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff, }
vs.
ALBERT HUEGIN ET AL., Defendants. }

This case coming on on November 20th, A. D. 1901, at the then current term of said court, Hon. George W. Burnell, judge presiding, he having been called in by Judge A. C. Brazee, who had heretofore acted for the State in this matter; and the defendant, Albert

Huegin, having filed and served a special plea in bar, and the district attorney having demurred to said plea, and the court having sustained said demurrer, to which ruling the said Albert Huegin then and there duly excepted, said exception is hereby allowed and signed, and the said Albert Huegin thereupon declared in open court that he stood upon said plea, and the court thereupon found Albert Huegin guilty as charged in the information, and sentenced him to pay a fine of 150 dollars, together with 67.10 dollars, one-third of the costs of prosecution, and that in default of the payment of such fine and costs the said Albert Huegin be committed to the House of Correction for Milwaukee county until such fine and costs are paid, not to exceed 30 days, to which judgment the said Albert Huegin duly excepted, and the exception is hereby allowed and signed. And thereupon, the said Albert Huegin asked for a stay of proceedings until the return of and filing of the remittitur finally in this cause in this court, for the purpose of enabling him to review said judgment by writ of error under and pursuant to sections 4720 and 4722 of the Revised Statutes, which stay of proceedings is hereby granted, provided that the said Albert Huegin recognize to the State of Wisconsin in the sum of $500 *dollars*, with sufficient sureties for his personal appearance at the supreme court at
87 the next term thereof, to then enter and prosecute his said exceptions with effect, and abide the sentence thereon, and in the meantime keep the peace and be of good behavior. Recognizance offered and filed and sureties approved.

Dated this 20th day of November, A. D. 1901.

By the court,

GEO. W. BURNELL,
Judge Presiding.

(Endorsements:) Municipal court, Milwaukee county. State of Wisconsin *v.* Andrew J. Aikens *et al.* Exceptions. Geo. D. Van Dyke, attorney for Albert Huegin. Filed Nov. 20, 1901. Frank E. Woller, clerk of municipal court.

88 STATE OF WISCONSIN, } *ss*:
Milwaukee County, }

In the Municipal Court of the County of Milwaukee.

We, Albert Huegin, and J. H. Puelicher and Herman Bleyer, of the county of Milwaukee, acknowledge ourselves to be indebted to the State of Wisconsin in the sum of five hundred dollars, to be made and levied of our several goods and chattels, lands and tenements, if default be made in the following condition, to wit:

The condition of this recognizance is such that, whereas, the said Albert Huegin was, on the 20th day of November, A. D. 1901, convicted before the municipal court of the county of Milwaukee, of the offense of conspiracy to injure, and sentenced to pay a fine of one hundred and fifty dollars and costs taxed at sixty-seven and 10/100 dollars, aggregating $217.10, and to be committed to the

House of Correction of said county, until such fine and costs are paid or discharged, such imprisonment not to exceed 30 days; and whereas, the said Albert Huegin has presented exceptions which were allowed and signed preparatory to suing out a writ of error from the judgment of said municipal court rendered thereon, to the supreme court of the State of Wisconsin.

Now, therefore, if the said Albert Huegin shall personally appear in said supreme court on the first day of the next regular term of said court, and from time to time thereafter until discharged by law, and to enter and there prosecute his exceptions with effect, and abide the sentence of the court thereon, and in the meantime keep the peace and be of good behavior, then this recognizance to be void, otherwise of force.

Dated, Milwaukee, this 20th day of November, 1901.

ALBERT HUEGIN.
HERMAN BLEYER.
J. H. PUELICHER.

89 STATE OF WISCONSIN, } ss:
Milwaukee County, }

J. H. Puelicher and Herman Bleyer, the sureties above named, being severally duly sworn, each for himself on oath, says that he owns and possesses unincumbered real estate, within this State, not exempt from sale on execution, worth at least the sum of one thousand dollars.

J. H. PUELICHER.
HERMAN BLEYER.

Subscribed and sworn to before me this 20th day of November, A. D. 1901.

THOS. V. DALLY,
Deputy Clerk of the Municipal Court.

Approved Nov. 20, 1901.

FRANK E. WOLLER,
Clerk of the Municipal Court.

(Endorsements:) State of Wisconsin, Milwaukee county. Municipal court, county of Milwaukee. The State of Wisconsin against Albert Huegin. Recognizance for appeal. Approved as to form and sufficiency of sureties this 20th day of November, 1901. George W. Burnell, judge. Filed Nov. 20, 1901. Frank E. Woller, clerk of municipal court.

90 In Municipal Court, Milwaukee County.

THE STATE OF WISCONSIN, Plaintiff, }
vs. }
ALBERT HUEGIN ET AL., Defendants. }

At a regular term of said court current on November 20, A. D. 1901, Honorable George W. Burnell judge presiding, who *having*

been called in by Judge A. C. Brazee for the reason that the latter was disqualified having heretofore acted for the State in this matter, the State of Wisconsin appeared by W. H. Bennett, district attorney of Milwaukee county, and the accused defendant aforesaid Albert Huegin appeared by George D. Van Dyke, his attorney and the following proceedings were had; said district attorney in behalf of the State presented his motion to strike out the special plea in bar interposed by the said defendant Albert Huegin, and after hearing the said district attorney for said motion and the said Albert Huegin opposed, said motion was denied; whereupon the said district attorney asked that his said motion papers might stand and be considered as a demurrer to such special plea in bar and the accused defendant consenting thereunto it was so ordered. Whereupon after hearing the said district attorney in behalf of the State and the said Geo. D. Van Dyke in behalf of the accused defendant, Albert Huegin, the court ordered that said demurrer of the State to said special plea in bar be and the same was sustained, to which ruling the said accused defendant Albert Huegin then and there duly excepted, which exception was reduced to writing and then and there allowed, whereupon the said accused defendant Albert Huegin declared that he stood upon said plea and did not desire to plead over. The court then found the said accused defendant guilty as charged in the information and sentenced him to pay a fine of one hundred and fifty dollars together with sixty-seven and 10/100 dol-
91 lars costs, being one-third of the whole cost of this proceeding, and in default of such payment be committed to the House of Correction for Milwaukee county, until such fine and costs are paid, not, however, in all exceeding thirty days. Whereupon the said accused defendant Albert Huegin then and there duly tendered his exception to said finding and judgment of conviction, which exception was reduced to writing and allowed; and in order that said proceedings had may more certainly appear of record in this cause the foregoing is by consent of both parties this day signed, sealed and certified by me as and for a bill of exceptions on the part of the said accused defendant Albert Huegin, in the cause aforesaid.

Dated November 25th, A. D. 1901.

GEO. W. BURNELL,
Judge Presiding.

(Endorsements:) Municipal court, Milwaukee county. The State of Wisconsin, plaintiff, *v.* Albert Huegin, defendant. Bill of exceptions. Van Dyke & Van Dyke & Carter, room 112 New Insurance building, Milwaukee, Wisconsin, attorneys for defendant, Albert Huegin. Filed Nov. 26, 1901. Frank E. Woller, clerk of municipal court.

91½ In Municipal Court, Milwaukee County.

THE STATE OF WISCONSIN, Plaintiff,
vs.
ANDREW J. AIKENS, ALBERT HUEGIN, and MELVIN A. HOYT, Defendants.

To W. H. Bennett, Esq., district attorney:

You will please take notice that Albert Huegin, one of the defendants in the above-entitled action has this day filed with the clerk of the above-named court a writ of error from the supreme court of the State of Wisconsin in the above-entitled action, and a full, true and complete copy of said writ of error is hereto attached.

Dated Milwaukee, November 26th, 1901.

Yours, etc., GEO. D. VAN DYKE,
Attorney for Albert Huegin, Defendant.

92 STATE OF WISCONSIN, } ss:
Supreme Court, }

The State of Wisconsin to the judge of the municipal court of the county of Milwaukee, in said State, Greeting:

Because, in the record and proceedings, and also in the renditio of judgment, in a suit which was duly tried in the municipa court of Milwaukee county aforesaid, before you, between The Stat of Wisconsin plaintiff, and Andrew J. Aikens, Albert Huegin an Melvin A. Hoyt, defendants, in a criminal prosecution for misd meanor manifest error hath intervened to the great damage of th said Albert Huegin, as by his complaint we are informed.

And we being willing that the error, if any there be, should i due manner be corrected and full and speedy justice done to th parties aforesaid, do command you, that if judgment be thereupo given, then you send to the judges of the supreme court of the Stat of Wisconsin, distinctly and openly, under your seal, with all con venient dispatch, a transcript of the record and proceedings of th suit aforesaid, with all things concerning the same and this writ, s that they may have the same at the next term of our said supreme court, to be held at Madison, in the State aforesaid, on the Tuesda next preceding the second Wednesday in January anno Domini on thousand nine hundred and two that the record and proceeding aforesaid being inspected, we may cause further to be done, for co recting that error, what of right, and according to law and th rules of our said court, ought to be done.

Witness, the Hon. John B. Cassoday, chief justice of the supreme court of the State of Wisconsin, at Madison, this twenty-sixth day o November, A. D. 1901.

Attest:

[SEAL.] CLARENCE KELLOGG, *Clerk.*

93 (Endorsements:) Municipal court, Milwaukee county State of Wisconsin, plaintiff, *v.* A. J. Aikens *et al.*, defendant

Notice of filing writ of error. Due service of the within notice admitted this 26th day of November, A. D. 1901. W. H. Bennett, district att'y and att'y for plaintiff. Filed Nov. 26, 1901. Frank E. Woller, clerk of municipal court.

94 State of Wisconsin, Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
MELVIN A. HOYT, ANDREW J. AIKENS, and ALBERT HUEGIN, Defendants.

And the said Melvin A. Hoyt separately and in his own proper person, cometh into court here, and having heard the information read, saith, that the said information, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that he is not bound by the law of the land to answer the same; and in addition thereto this defendant alleges the following special objections to the said information, to wit:

(1.) That the said several alleged conspiracies, combinations, confederations, associations, agreements and mutual understandings between this defendant and the other defendants named in the said information, were such conspiracies, combinations, confederations, associations, agreements and understandings as this defendant and the said other defendants had a lawful right to make and enter into as forming a part of their legitimate trade and competition between the said defendants with the said Journal Company and its officers and stockholders in the lawful conduct of the business of this defendant and the said other defendants as publishers of the newspapers respectively conducted by the said defendants, and the said Journal Company.

(2.) That the several acts charged in the said information as having been performed by this defendant and the said other defendants, do not state any criminal offense known to the law, but such acts, and each and every of them, were lawful and legitimate acts of competition in trade such as this defendant and said other
95 defendants had lawful right to perform in the law.

(3.) That the said several alleged conspiracies, combinations, confederations, associations, agreements and mutual understandings had between this defendant and the said other defendants, Andrew J. Aikens and Albert Huegin, were such conspiracies, combinations, associations, agreements and mutual understandings as this defendant and the said other defendants, as citizens of the United States and the State of Wisconsin, had lawful right to make and enter into in the conduct and management of the said several newspapers so published by this defendant and the said other defendants, Andrew J. Aikens and the said Albert Huegin respectively, under the Constitution and laws of the United States, and especially under and by virtue of the provisions of article XIV of

the amendments to the Constitution of the United States, and this defendant claims the protection thereof.

(4.) That the several acts charged therein, as having been done and performed by this defendant and the said other defendants, Andrew J. Aikens and Albert Huegin in furtherance of the said alleged several conspiracies, combinations, confederations, associations, agreements and mutual understandings between this defendant and the said other defendants, were severally and respectively such acts as this defendant and the said other defendants had lawful right to do and perform as citizens of the United States and of the State of Wisconsin, as lawful and legitimate conspiracies, combinations, confederations, associations, agreements and mutual understandings, in the conduct of the business of this defendant and the publication of his said newspaper, and that of the newspapers of said other defendants, and in the publication of the said newspapers published by them respectively, and that such acts were innocent acts and lawful acts of competition in the trade and business of this defendant and in the trade and business of the said other de-
96 fendants, under the Constitution and laws of the United States and especially under the provisions of article XIV of the amendments to the Constitution of the United States, and this defendant claims the protection thereof.

(5.) And because the said information does not state any fact or facts which constitute a criminal offense known to the laws of the State of Wisconsin, but the acts so charged were and are legitimate acts of trade and competition such as any citizen of said State might lawfully employ in the conduct of his business; and this he is ready to verify.

Wherefore, for want of a sufficient information in this behalf, the said Melvin A. Hoyt prays judgment, and that by this court here he may be dismissed and discharged from the said premises in the said information specified.

NEWTON P. MURPHEY,
Attorney for Melvin A. Hoyt, One of the Defendants.

(Endorsements:) State of Wisconsin, municipal court, Milwaukee county. State of Wisconsin, plaintiff, *v.* Melvin A. Hoyt, Andrew J. Aikens and Albert Huegin, defendants. Demurrer of def't Hoyt. Filed Oct. 21st, 1901. Frank E. Woller, clerk of municipal court. N. S. Murphey, att'y for def't Hoyt.

97 In Municipal Court, Milwaukee County.

STATE OF WISCONSIN, Plaintiff,
vs.
MELVIN A. HOYT ET AL., Defendants.

This case coming on on November 20th, A. D. 1901, at the then current term of said court, Hon. George W. Burnell, judge presiding, he having been called in by Judge A. C. Brazee, who had heretofore acted for the State in this matter; and the defendant, Melvin A.

Hoyt, having filed and served a demurrer to the information filed herein, and the court having overruled said demurrer, to which ruling the said Melvin A. Hoyt then and there duly excepted, said exception is hereby allowed, and the said Melvin A. Hoyt thereupon declared in open court that he stood upon said demurrer, and the court thereupon found said Melvin A. Hoyt guilty as charged in the information, and sentenced him to pay a fine of one hundred and fifty dollars together with $67.10, one-third of the costs of prosecution, and that in default of the payment of such fine and costs the said Melvin A. Hoyt be committed to the House of Correction for Milwaukee county until such fine and costs are paid, not to exceed 30 days, to which judgment the said Melvin A. Hoyt duly excepted, and the exception is hereby allowed. And thereupon the said Melvin A. Hoyt asked for a stay of proceedings until the return of and filing of the remittitur finally in this cause, for the purpose of enabling him to review said judgment by writ of error under and pursuant to sections 4720 and 4722 of the Revised Statutes, which stay of proceedings is hereby granted, provided that the said Melvin A. Hoyt recognize to the State of Wisconsin in the sum of $500.00, with sufficient sureties for his personal appearance
98 at the supreme court at the next term thereof, to then enter and prosecute his said exceptions with effect, and abide the sentence thereon, and in the meantime keep the peace and be of good behavior. Recognizance offered and filed and sureties approved.

Dated this 20th day of November, A. D. 1901.

By the court,

GEO. W. BURNELL,
Judge Presiding.

(Endorsements:) Municipal court, Milwaukee county. State of Wisconsin *v.* Melvin A. Hoyt *et al.* Exceptions. N. S. Murphey, attorney for Melvin A. Hoyt. Filed Nov. 20, 1901. Frank E. Woller, clerk of municipal court.

99 STATE OF WISCONSIN, } *ss*:
Milwaukee County, }

In the Municipal Court of the County of Milwaukee.

We, Melvin A. Hoyt, Frederick Seibel and George Brumder, of the county of Milwaukee, acknowledge ourselves to be indebted to the State of Wisconsin in the sum of five hundred dollars, to be made and levied of our several goods and chattels, lands and tenements, if default be made in the following condition, to wit:

The condition of this recognizance is such that, whereas, the said Melvin A. Hoyt was, on the 20th day of November, A. D. 1901, convicted before the municipal court of the county of Milwaukee, of the offense of conspiracy to injure and sentenced to pay a fine of one hundred and fifty dollars, and costs taxed at sixty-seven and $\frac{10}{100}$ dollars, and to be committed to the House of Correction of said county,

until such fine and costs are paid or discharged, such imprisonment not to exceed thirty days; and whereas, the said Melvin A. Hoyt has presented exceptions under R. S. section 7220 which were allowed preparatory to suing out a writ of error from the judgment of said municipal court rendered thereon, to the supreme court of the State of Wisconsin;

Now, therefore, if the said Melvin A. Hoyt shall personally appear in said supreme court of the State of Wisconsin, on the first day of the next regular term of said court, and from time to time thereafter until discharged by law, and to enter and prosecute his exceptions with effect, and abide the sentence of the court thereon, and in the meantime keep the peace and be of good behavior, then this recognizance to be void, otherwise of force.

Dated, Milwaukee, this 20th day of November, 1901.

MELVIN A. HOYT.
FRITZ SEIBEL.
GEO. BRUMDER.

100 STATE OF WISCONSIN, } ss:
Milwaukee County, }

Fred Seibel and Geo. Brunder, the sureties above named, being severally duly sworn, each for himself on oath, says that he owns and possesses unincumbered real estate, within this State, not exempt from sale on execution, worth at least the sum of one thousand dollars.

FRITZ SEIBEL.
GEO. BRUMDER.

Subscribed and sworn to before me, this 20th day of November, A. D. 1901.

THOS. V. DALLY,
Deputy Clerk of the Municipal Court.

Approved Nov. 20, 1901.
FRANK E. WOLLER,
Clerk of the Municipal Court.

(Endorsements:) State of Wisconsin, Milwaukee county. Municipal court, county of Milwaukee. The State of Wisconsin against Melvin A. Hoyt *et al.* Recognizance for appeal. Approved as to form and sufficiency of sureties, this 20th day of November, 1901. Geo. W. Burnell, judge. Filed Nov. 20, 1901. Frank E. Woller, clerk of municipal court.

01 STATE OF WISCONSIN:

In Municipal Court, Milwaukee County.

THE STATE OF WISCONSIN, Plaintiff,
vs.
MELVIN A. HOYT ET AL., Defendants.

At a regular term of said court holden on November 20th, A. D. 1901, Honorable George W. Burnell judge presiding, who *having* been called in by Judge A. C. Brazee for the reason that the latter judge was disqualified to try said cause, having heretofore acted for the said State in this matter, as district attorney for the county of Milwaukee, the State of Wisconsin appearing by W. H. Bennett, district attorney of Milwaukee county, and the accused defendant Melvin A. Hoyt aforesaid appearing by Newton S. Murphey, his attorney, *and* the following proceedings were had: The said cause coming on to be heard upon the demurrer heretofore filed by the said defendant Melvin A. Hoyt to the information filed herein by said district attorney, and after hearing the said district attorney for the State in opposition to the said demurrer, and the defendant Melvin A. Hoyt by his said attorney in support thereof, and the court being advised in the premises, whereupon the court ordered that the said demurrer of the said defendant Melvin A. Hoyt be and the same was thereby overruled, to which ruling the said defendant Melvin A. Hoyt then and there duly excepted, which exception was reduced to writing and then and there allowed, whereupon the said accused defendant Melvin A. Hoyt declared that he stood upon said demurrer and did not desire to plead over. The court thereupon found the said defendant Melvin A. Hoyt guilty as charged in the information and sentenced him to — a fine of one hundred and fifty dollars, together with sixty-seven and 10/100 dollars costs, being one-third of the whole cost of this proceeding, and in default of such payment be committed to the House of Correction for
102 Milwaukee county until such fine and costs are paid, not, however, in all exceeding thirty days. Whereupon the said defendant Melvin A. Hoyt then and there duly tendered his exception to said finding and judgment of conviction, which exception was reduced to writing and allowed; and in order that said proceedings had may more certainly appear of record in this cause the foregoing is by consent of both parties this day signed, sealed and certified by me as and for a bill of exceptions on the part of the said accused defendant Melvin A. Hoyt in the cause aforesaid.

Dated November 23rd, A. D. 1901.

GEORGE W. BURNELL, [SEAL.]
Judge Presiding.

(Endorsements:) Municipal court, Milwaukee county. The State of Wisconsin, plaintiff, *v.* Melvin A. Hoyt *et al.*, defendants. Bill of exceptions. We consent that Judge Burnell may sign and seal within as bill of exceptions in above cause. Nov. 22, 1901. W. H.

Bennett, dist. at'ty Mil. Co., Wis. Newton S. Murphey, att'y for def't Melvin A. Hoyt. Filed Nov. 26, 1901. Frank E. Woller, clerk of municipal court. Newton S. Murphey, att'y for def't Melvin A. Hoyt.

103 STATE OF WISCONSIN, } ss:
Municipal Court, Milwaukee County, }

I, Frank E. Woller, clerk of the municipal court of Milwaukee county, do hereby certify that I have compared the foregoing copies with the original capias, information for conspiracy, plea of A. J. Aikens, order setting case for trial, notice of time of hearing, affidavit and notice of motion to strike out plea of A. J. Aikens, affidavit and notice of motion to strike out plea of A. J. Aikens, exceptions of defendant, A. J. Aikens, recognizance of A. J. Aikens, bill of exceptions of A. J. Aikens, notice of filing writ of error of A. J. Aikens, plea of Albert Huegin, affidavit and notice of motion to strike out special plea of Albert Huegin, affidavit and notice of motion to strike out special plea of Albert Huegin, exceptions of defendant, Albert Huegin, recognizance of defendant, Albert Huegin, bill of exceptions of defendant, Albert Huegin, notice of filing writ of error of defendant, Albert Huegin; demurrer of defendant Melvin A. Hoyt, exceptions of defendant, Melvin A. Hoyt, recognizance of defendant Melvin A. Hoyt, bill of exceptions of defendant, Melvin A. Hoyt, together with all endorsements on each and every of the foregoing, entered in the action therein entitled, that it is a correct transcript therefrom and of the whole thereof, as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 4th day of December, A. D. 1901.

[SEAL.] FRANK E. WOLLER,
Clerk of the Municipal Court.

104 STATE OF WISCONSIN, } ss:
Municipal Court, Milwaukee County, }

I, Frank E. Woller, clerk of the municipal court of Milwaukee county, do hereby certify that pursuant to the command of the annexed writ of error, I herewith transmit to the supreme court of the State of Wisconsin, certified copies of all of the original papers filed in the therein-entitled action, together with a certified copy of the original record entered in said action, and I further certify that the foregoing are certified copies of all said original papers, being the original capias, information for conspiracy, plea of A. J. Aikens, order setting case for trial, notice of time of hearing, affidavit and notice of motion to strike out plea of A. J. Aikens, affidavit and notice of motion to strike out plea of A. J. Aikens, exceptions of defendant, A. J. Aikens, recognizance of A. J. Aikens, bill of exceptions of A. J. Aikens, notice of filing writ of error of A. J. Aikens; plea of Albert Huegin, affidavit and notice of motion to strike out special plea of Albert Huegin, affidavit and notice of motion to

strike out special plea of Albert Huegin, exceptions of defendant, Albert Huegin, recognizance of defendant, Albert Huegin, bill of exceptions of defendant, Albert Huegin, notice of filing of writ of error of defendant, Albert Huegin; demurrer of defendant Melvin A. Hoyt, exceptions of defendant, Melvin A. Hoyt, recognizance of defendant, Melvin A. Hoyt, bill of exceptions of defendant, Melvin A. Hoyt, together with all endorsements on each and every of the foregoing, filed and entered in the action therein entitled and of record in my office.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said court this 4th day of December, A. D. 1901.

FRANK E. WOLLER,
Clerk of the Municipal Court.

105 STATE OF WISCONSIN, } ss:
Municipal Court, Milwaukee County, }

I, Frank E. Woller, clerk of the municipal court of Milwaukee county, do hereby certify that the foregoing words "*at hard labor,*" where they appear in the original return, were erased by me so that said return would conform to the judgment and sentence of the court.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court this 7th day of February, A. D. 1902.

FRANK E. WOLLER,
Clerk of the Municipal Court.

106 And afterwards, to wit: on the first day of February, A. D. 1902, the same being the thirteenth day of said term, the following proceedings were had in this court, in said cause, that is to say:

Milwaukee Municipal Court.

MELVIN A. HOYT, Plaintiff in Error, }
vs.
STATE OF WISCONSIN, Defendant in Error. }

And now at this day came the parties herein by their attorneys and submitted this cause to the court on case and briefs, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

107 And afterwards, to wit: on the eighteenth day of February, A. D. 1902, the same being the fourteenth day of said term, judgment was rendered in said cause, by this court, in the words and figures following, that is to say:

Milwaukee Municipal Court.

MELVIN A. HOYT, Plaintiff in Error,
vs.
STATE OF WISCONSIN, Defendant in Error.
} Opinion by Justice Marshall.

This cause came on to be heard on the return to the writ of error issued herein, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court, that the judgment of the municipal court of Milwaukee county, in this cause, be and the same is hereby affirmed, with costs against the said plaintiff in error taxed at the sum of — dollars.

Justice Dodge took no part.

1860 And afterwards, to wit: on the fifth day of February, A. D. 1861, a stipulation was filed in this court, in this cause, in the words and figures following, that is to say:

Supreme Court.

STATE OF WISCONSIN, Defendant in Error,
vs.
MELVIN A. HOYT ET AL., Plaintiffs in Error.

It is hereby agreed between the above-named defendant in error and Melvin A. Hoyt, one of the plaintiffs in error, as follows:

Whereas it appears from the record returned by the clerk of the municipal court of Milwaukee county to the writ of error issued from this court in the case of State of Wisconsin v. the said Melvin A. Hoyt, that there is a contradiction in the same as follows: To judgment of the municipal court against the said Melvin it is adjudged that he shall pay a certain fine and certain costs of suit and that in default of such payment he be confined in the House of Correction of Milwaukee county until said fine and costs are paid in all not exceeding 30 days; and it further appearing from the return of the clerk of said municipal court to the said writ of error that the said judgment imposed the fine and costs above stated and that in default of such payment the said Melvin A. Hoyt should be imprisoned in the House of Correction of Milwaukee county "a term below" until such fine and costs were paid not exceeding 30 days in all. And,

Whereas the said judgment and the return of the said clerk are contradictory of each other in respect to the said "term below" provided by said clerk to be imposed upon the said Hoyt.

1860 Now therefore it is agreed that the record in the said cause may be remanded further to the clerk of the municipal court of Milwaukee county with directions to correct his said certificate to this court so as to conform to the judgment and

by the said municipal court or otherwise in conformity with the directions of the judge of said municipal court.

Dated Feb. 6, 1902.

BY THE COURT.

[illegible]
Att'y Gen'l, for Defendant in Error.

[illegible]
Attorney for Plaintiff in Error.

[Endorsed:] Supreme court. State of Wisconsin, def't in error, vs. Edwin C. Bream et al., pl'ffs in error. Stipulation. Filed Feb. 7, 1902. Clarence Kellogg, clerk of supreme court. W. J. C. Kingsley, att'y for Edwin C. Bream et al., pl'ffs in error.

And thereupon, this court, by Justice Marshall, filed its opinion in said cause, in the words and figures following, that is to say:

Nos. 1, 2, and 3. State

STATE OF WISCONSIN:

In Supreme Court.

Edwin C. Bream, Plaintiff in Error, }
vs.
State of Wisconsin, Defendant in Error. }

Clarence Kellogg, Plaintiff in Error, }
vs.
State of Wisconsin, Defendant in Error. }

Edwin C. Bream, Plaintiff in Error, }
vs.
State of Wisconsin, Defendant in Error. }

Each of the plaintiffs in error and on his proper motion was brought before the municipal court of Milwaukee county, charged with the guilt of having committed an offense in violation of section 4600a, R. S. 1898, as charged in the information. The substance of the complaint upon which the plaintiffs in error were originally charged and brought before a magistrate for their preliminary examination, and the constitutionality of sec. 4600a of said statutes as construed by this court and sustained on a review of [illegible] upon [illegible] 112 Wis. p. 178. On said review there was no question but that the complaint fully satisfied the statute. It was discharged and the cases [illegible] as constitutional grounds. [illegible] the cases were remanded for further proceedings according to law. Thereupon an information was duly filed charging the accused [illegible] substantially as in the complaint, which has been passed upon as aforesaid.

Upon being duly arraigned upon such information, [illegible] Bream and Edwin Kingsley separately filed pleas attacking the

charge made against them, but insisting that the same did not constitute a criminal offense, assigning in support thereof the same reasons as those formerly urged and passed upon by this court as aforesaid. Melvin A. Hoyt, being duly arraigned upon the information, took the same course as his associates by demurring to such information. The special pleas and the demurrer to the information were overruled. The plaintiffs in error thereupon, each in his own behalf, refused to plead over to the information, admitted all the allegations thereof, but insisted that the acts charged do not constitute a punishable offense. Thereupon the plaintiffs in error were severally adjudged guilty as charged in the information, and punishment therefor was duly imposed by the judgment of the court. Thereupon these writs of error were sued out to review such judgments.

MARSHALL, *J.*:

From the foregoing statement it appears that all the questions raised in the court below by plaintiffs in error were considered and decided against them in State *v.* Aikens, State *v.* Huegin, and State *v.* Hoyt, 110 Wis., 189. The trial court followed that decision as it was bound to do. As we understand the matter the information
113 contains the same charge as the one set forth in the complaint, the plaintiffs in error in effect pleaded guilty thereto, admitting the doing of all the acts charged against them, and they were thereupon duly adjudged guilty and sentenced. In that view the judgments must be affirmed, as all questions in regard to the matters are *res adjudicata*, as before indicated.

By the COURT: The judgment as to each of the plaintiffs in error is affirmed.

114 MELVIN A. HOYT, Plaintiff in Error,
vs.
STATE OF WISCONSIN, Defendant in Error.

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file and of record in my office with all things concerning the same in the above-entitled cause.

That the original writ of error, the petition therefor, the citation with its service endorsed thereon, the assignment of errors and a copy of the bond are appended to the return herein, and that they are all returned to the Supreme Court of the United States in obedience to the command of the writ of error hereto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Madison, this 7th day of April, 1902.

Seal Supreme Court of Wisconsin.

CLARENCE KELLOGG,
Clerk of Supreme Court, Wisconsin.

115 Supreme Court of the United States.

STATE OF WISCONSIN, Defendant in Error,
vs.
MELVIN A. HOYT, Plaintiff in Error.

Of the October term in the year of our Lord one thousand nine hundred and one.

Afterwards to wit, on the eleventh day of April in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Melvin A. Hoyt, by Newton S. Murphey his attorney, and says that in the record and proceedings aforesaid, there is manifest error, in this to wit,—

First. In the affirmance by the supreme court of the State of Wisconsin, of the judgment and findings of the municipal court of the county of Milwaukee in the said State, adjudging the said Melvin A. Hoyt, plaintiff in error, guilty of a conspiracy as charged in the information filed in the said last-named court, and in imposing a fine and sentence in pursuance thereof upon him the said Melvin A. Hoyt.

Second. And in the holding and judgment of the said supreme court of the State of Wisconsin, that the several, or any of the acts charged in the said information to have been performed or done by the said Melvin A. Hoyt, or agreed to be done or performed by the said Melvin A. Hoyt singly, or in combination with Andrew J. Aikens and Albert Huegen the said coplaintiffs in error with said Melvin A. Hoyt, or either of them, were criminal, unlawful, or prohibited combinations or acts in the law.

116 Third. And the said supreme court of the State of Wisconsin further erred in its said judgment by holding and adjudging that the provisions of article XIV of the amendments to the Constitution of the United States, though a construction of said article XIV was thereby necessarily drawn in question in such adjudication, was not a protection in the law, of the said Melvin A. Hoyt, against any combination, act, or acts, charged in the said information to have been done, or agreed to be done, by the said Melvin A. Hoyt, either singly, or in combination with the said Andrew J. Aikens and Albert Huegen, or either of them; whereby, and by reason of such erroneous holding and judgment of the said supreme court of the State of Wisconsin, the said Melvin A. Hoyt, was deprived of the rights, privileges, and immunities, secured to him by the said article XIV of the amendments to the Constitution of the United States, and of the liberty, property, and due process of law secured to him as a citizen of the United States and of the State of Wisconsin.

Fourth. And though the validity of section 4466a of Sanborn & Berryman's edition of the Revised Statutes of the State of Wisconsin for the year A. D. 1898, was necessarily drawn in question, in the aforesaid judgment of the said supreme court of the State of Wisconsin, as being repugnant to the Constitution of the United States

and especially to the said article XIV of the amendments to the said Constitution, the said supreme court of the State of Wisconsin further erred in its said judgment in sustaining the validity of the said statute, and by holding, as it did hold, the same, a valid enactment; whereby the said Melvin A. Hoyt was deprived of his rights, privileges, and immunities, as a citizen of the United States, and of the State of Wisconsin, and of the liberty, property, and due process of law, secured to him by the said article XIV of the amendments to the Constitution of the United States.

117 And the said Melvin A. Hoyt prays that the judgment aforesaid, may be reversed, annulled, and altogether held for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment.

NEWTON S. MURPHEY,
Attorney for Plaintiff in Error, Melvin A. Hoyt.

118 [Endorsed:] Supreme Court of the United States. State of Wisconsin, defendant in error, *vs.* Melvin A. Hoyt, plaintiff in error. Assignment of errors. Original. Sir: You will take notice that the within assignment of errors in the above case will be filed with the clerk of said court at Washington D. C. May 12 1902 Newton S. Murphey att'y for pl'ff in error. To E. R. Hicks att'y gen'l, att'y for defendant in error. May 9 1902. Newton S. Murphey, attorney for plaintiff in error, Melvin A. Hoyt. Served May 9 1902

119 [Endorsed:] File No. 18,487. Supreme Court U. S. October term, 1901 Term No. 634. Melvin A. Hoyt, pl'ff in error, *vs.* The State of Wisconsin. Assignment of errors. Filed May 12th, 1902

Endorsed on cover: File No. 18,487. Wisconsin supreme court. Term No. 299 Melvin A. Hoyt, plaintiff in error, *vs.* The State of Wisconsin. Filed April 11th, 1902.